Chapter 18.70
WETLANDS PROTECTION

Sections:

18.70.010 Findings of fact and purpose.

A. Findings of Fact. The city council hereby finds that:

1. Wetlands and their buffer areas are valuable and fragile natural resources with significant development constraints due to flooding, erosion, soil liquefaction potential, and septic disposal limitations;

2. In their natural state, wetlands provide many valuable social and ecological services, including:

a. Controlling flooding and storm water runoff by storing or regulating natural flows;

b. Protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation;

c. Providing areas for ground water recharge;

d. Preventing shoreline erosion by stabilizing the substrate;

e. Providing habitat areas for many species of fish, wildlife and vegetation, many of which are dependent on wetlands for their survival, and many of which are on Washington State and federal endangered species lists;

f. Providing open space and visual relief from intense development in urbanized areas;

g. Providing recreation opportunities; and

h. Serving as areas for scientific study and natural resource education;

3. Development in wetlands and wetland buffers may result in:

a. Increased soil erosion and sedimentation of downstream water bodies, including navigable channels;

b. Increased shoreline erosion;

c. Degraded water quality due to increased turbidity and loss of pollutant removal processes;

d. Elimination or degradation of wildlife and fisheries habitat;

e. Loss of fishery resources from water quality degradation, increased peakflow rates, decreased summer low flows, and changes in the stream flow regimen;

f. Loss of storm water retention capacity and slow-release detention resulting in flooding, degraded water quality, and changes in the stream flow regimen of watersheds;

g. Loss of ground water recharge areas;

4. Buffer areas surrounding wetlands are essential to maintenance and protection of wetland functions and values. Buffer areas protect wetlands from degradation by:
a. Stabilizing soil and preventing erosion;
b. Filtering suspended solids, nutrients, and harmful or toxic substances;
c. Moderating impacts of storm water runoff;
d. Moderating system microclimate;
e. Protecting wetland wildlife habitat from adverse impacts;
f. Maintaining and enhancing habitat diversity and/or integrity;
g. Supporting and protecting wetlands plant and animal species and biotic communities; and
h. Reducing disturbances to wetland resources caused by intrusion of humans and domestic animals;
5. The loss of functions which can be provided by wetlands results in a detriment to public safety and welfare; replacement of such services, if possible at all, can require considerable public expenditure;
6. Important natural resources have been lost or degraded by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Remaining wetlands are in jeopardy of being lost, despoiled, or impaired by such acts;
7. It is therefore necessary for the city to ensure maximum protection for wetland areas by discouraging development activities in wetlands and those activities at adjacent sites that may adversely affect wetland functions and values, and to encourage restoration and enhancement of already degraded wetland systems.
B. Purpose.
1. It is the policy of the city to require site planning to avoid or minimize damage to wetlands wherever possible; to require that activities not dependent upon a wetland location be located at upland sites; and to achieve no net loss of wetlands by requiring restoration or enhancement of degraded wetlands or creation of new wetlands to offset losses which are unavoidable.
2. In addition, it is the intent of the city that activities in or affecting wetlands not threaten public safety, cause nuisances, or destroy or degrade natural wetland functions and values by:
a. Impeding flood flows, reducing flood storage capacity, or impairing natural flood control functions, thereby resulting in increased flood heights, frequencies, or velocities on other lands;
b. Increasing water pollution through location of domestic waste disposal systems in wetlands; unauthorized application of pesticides and herbicides; disposal of solid waste at inappropriate sites; creation of unstable fills, or the destruction of wetland soils and vegetation;
c. Increasing erosion;
. Decreasing breeding, nesting and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
e. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;
f. Decreasing habitat for fish and other forms of wildlife;
g. Adversely altering the recharge or discharge functions of wetlands, thereby impacting ground water or surface water supplies;
h. Significantly altering wetland hydrology and thereby causing either short- or long-term changes in vegetational composition, soils characteristics, nutrient cycling, or water chemistry;
i. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
j. Interfering with public rights in navigable water, and the recreation opportunities provided by wetlands for fishing, boating, hiking, birdwatching, photography and other passive uses; or

k. Destroying or damaging aesthetic and property values, including significant public viewsheds.
3. The purposes of this chapter are to protect the public health, safety, and welfare by preventing the adverse environmental impacts of development enumerated in this section, and by:
a. Preserving, protecting and restoring wetlands by regulating, avoiding where possible, and mitigating development within them and their buffers;
b. Protecting the public against losses from:
i. Publicly funded mitigation or avoidable impacts,
ii. Cost for public emergency rescue and relief operations, and
iii. Potential litigation from improper construction practices authorized for wetland areas;
c. Alerting appraisers, assessors, owners and potential buyers or lessees to the development limitations of wetlands;
d. Providing city officials with information to evaluate, approve, condition or deny public or private development proposals;
e. Adopting the Governor's interim goal of achieving no overall net loss in acreage and functions of Washington's remaining wetland base and the long-term goal of protecting Washington's wetland resource base;
f. Implementing the goals, policies and standards of the city's comprehensive plan encouraging development to provide open space, encouraging development to preserve and incorporate existing unusual, unique and interesting natural features, reducing development intensity as natural environmental constraints increase, and avoiding intensive development of sites with severe environmental constraints;
g. Implementing the policies of the Growth Management Act; the State Environmental Policy Act, Chapter 43.21C RCW; the Puget Sound Water Quality Management Plan; the city zoning code; the city environmental policy, Chapter 16.04 SMC; and all other present and future city functional, environmental and community plans, programs and ordinances.
4. It is also the intent of this chapter to provide for the protection of private property owners' rights. (Ord. 630 § 1, 1992)

18.70.020 Definitions.
For the purposes of this chapter, the following definitions shall apply:
"Applicant" means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
"Best management practices" means conservation practices or systems of practices and management measures that:
1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and
2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical and biological characteristics of wetlands.
"Compensation project" means actions necessary to replace project-induced wetland and wetland buffer losses, including land acquisition, planning, construction plans, monitoring and contingency actions.
"Compensatory mitigation" means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:

1. "Creation," meaning actions performed to establish wetland functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.
2. "Restoration," meaning actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.
3. "Enhancement," meaning actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.
"Critical habitat" means habitat necessary for the survival of endangered and threatened species as defined by the State Department of Wildlife.
"Developable area" means an area of land outside of wetlands and wetland buffers.
"Department" means the Washington State Department of Ecology.
"Emergent wetland" means a regulated wetland with at least 30 percent of the surface area covered by erect, rooted herbaceous vegetation as the uppermost vegetative strata.
"Existing and ongoing agriculture" includes those activities conducted on lands defined in RCW 84.34.030(2), and those activities involved in the production of crops or livestock. For example, the operation and maintenance of farm and stock ponds or drainage ditches; operation and maintenance of ditches; irrigation systems, including irrigation laterals, canals or irrigation drainage ditches; changes between agricultural activities; and normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.
"Exotic" means any species of plants or animals that is foreign to the planning area.
"Extraordinary hardship" means that strict application of this chapter and/or programs adopted to implement this chapter by the city would prevent all reasonable economic use of the parcel.
"Forested wetlands: means a regulated wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height.
"Functions," "beneficial functions" or "functions and values" means the beneficial roles served by wetlands, including, but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; historical, archaeological and aesthetic value protection; and recreation. These beneficial roles are not listed in order of priority.
"High-quality wetlands" are those regulated wetlands which meet the following criteria:
1. No, or isolated, human alteration of the wetland topography;
2. No human-caused alteration of the hydrology, or else the wetland appears to have recovered from the alteration;
3. Low cover and frequency of exotic plant species;
4. Relatively little human-related disturbance of the native vegetation, or recovery from past disturbance;
5. If the wetland system is degraded, it still contains a viable and high-quality example of a native wetland community; and

6. No known major water quality problems.

"Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands. For the purposes of identifying wetland critical areas, hydric soils that qualify as "prime agricultural soils" only through artificial means that will impair the existence of natural wetlands (specifically, soils that are prime agricultural land only when drained), are considered potential wetlands indicators for the purposes of this chapter, and are not to be considered agricultural resource lands.

"Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

"In-kind compensation" means to replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

"Isolated wetlands" means those regulated wetlands which:

1. Are outside of and not contiguous to any 100-year floodplain of a lake, river or stream; and
2. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

"Mitigation" includes avoiding, minimizing, or compensating for adverse wetland impacts. Mitigation, in the following order of preference, is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
6. Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures.

"Native vegetation" means plant species which are indigenous to the area in question.

"Out-of-kind compensation" means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity. It does not refer to replacement "out-of-category."

"Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology and logistics in light of overall project purposes, and having less impact to regulated wetlands. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded or managed in order to fulfill the basic purposes of the proposed activity.

"Puget Sound" means all salt waters of the state of Washington inside the international boundary line between the state of Washington and the province of British Columbia, lying east of 123 degrees, 24 minutes west longitude.

"Regulated activities" means any of the following activities which are directly undertaken or originate in a regulated wetland or its buffer:

1. The removal, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter or material of any kind;
2. The dumping, discharging or filling with any material;
3. The draining, flooding or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition or expansion of any structure;
7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning or planting of vegetation that would alter the character of a regulated wetland; provided that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or
8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.

"Regulated wetlands" means ponds 20 acres or less, including their submerged aquatic beds, and those lands defined as wetlands under the Federal Clean Water Act, 33 USC Sec. 1251 et seq., and rules promulgated pursuant thereto, and shall be those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for a life in saturated soil conditions. Regulated wetlands generally include swamps, marshes, bogs and similar areas. Wetlands created as mitigation and wetlands modified for approved land use activities shall be considered as regulated wetlands. Category I, II, III and IV wetlands are defined in SMC 18.70.040(D). All Category I wetlands shall be considered regulated wetlands. Regulated wetlands do not include Category II and III wetlands less than 2,500 square feet and Category IV wetlands less than 10,000 square feet. Regulated wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds and landscape amenities. The applicant shall bear the burden of proving that the site was not previously a wetland. For identifying and delineating a regulated wetland, local government shall consider the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

"Repair or maintenance" means an activity that restores the character, scope, size and design of a serviceable area, structure or land use to its previously authorized and undamaged condition. Activities that change the character, size or scope of a project beyond the original design, and drain, dredge, fill, flood or otherwise alter additional regulated wetlands, are not included in this definition.

"Scrub-shrub wetland" means a regulated wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost stratum.

"Serviceable" means presently usable.

"Unavoidable and necessary impacts" are impacts to regulated wetlands that remain after a person proposing to alter regulated wetlands has demonstrated that no practicable alternative exists for the proposed project

"Water-dependent" means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.

"Wetlands," for the purposes of inventory, incentives and nonregulatory programs, means those lands transitional between terrestrial and aquatic systems where the water table is usually at or

near the surface, or the land is covered by shallow water. For the purposes of this definition, wetlands must have one or more of the following attributes:
1. At least periodically, the land supports predominantly hydrophytes;
2. The substrate is predominantly undrained hydric soil; and
3. The substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.
"Wetland buffer" or "wetland buffer zone" means an area that surrounds and protects a wetland from adverse impacts to the functions and values of a regulated wetland.
"Wetland classes," "classes of wetlands" or "wetland types: means descriptive classes of the wetlands taxonomic classification system of the Washington State Department of Ecology Wetlands Rating System (October, 1991).
"Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in this chapter.
"Wetlands permit" means any permit issued, conditioned or denied specifically to implement this chapter. (Ord. 630 § 1, 1992)

18.70.030 General provisions.
A. Abrogation and Greater Restrictions. It is not intended that this chapter repeal, abrogate or impair any existing regulations, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.
B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 630 § 1, 1992)

18.70.040 Lands to which this chapter applies.
A. Applicability.
1. When any provision of any other chapter of the Sequim Municipal Code conflicts with this chapter, that which provides more protection to wetlands and wetland buffers shall apply unless specifically provided otherwise in this chapter.
2. The city council is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. Prior to fulfilling the requirements of this chapter, the city shall not grant any approval or permission to conduct a regulated activity in a wetland or wetland buffer, including but not limited to the following: building permit, commercial or residential; binding site plan; conditional use permit; franchise right-of-way construction permit; grading and clearing permit; master plan development; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; unclassified use permit; variance; zone reclassification; subdivision; short subdivision; special use permit; utility and other use permit; or any subsequently adopted permit or required approval not expressly exempted by this chapter. Written procedures shall be approved by the city council and made part of this chapter.
B. Maps and Inventory.
1. This chapter shall apply to all lots or parcels on which wetlands and/or wetland buffers are located within the jurisdiction of the city. The approximate location and extent of wetlands in the city is displayed on the following maps:
a. Wetlands identified on the U.S. Fish and Wildlife Service National Wetlands Inventory, and city of Sequim maps;

b. Hydric soils and "wet spots" identified by the USDA Soils Conservation Service Soil Survey of Clallam County Area, Washington;
c. City composite, NWI wetland, and hydric soils maps, as may be modified from time to time.
2. These map resources are to be used as a guide to the general location and extent of wetlands. Wetlands not shown on these maps but meeting the criteria set forth in this chapter are presumed to exist in the city and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the maps conflict with the criteria set forth in this chapter, the criteria shall control.
C. Determination of Regulatory Wetland Boundary.
1. The exact location of the wetland boundary shall be determined through the performance of a field investigation applying the wetland definition provided in SMC 18.70.020. Qualified professional and technical scientists shall perform wetland delineations using the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands. An applicant for a wetland permit is required under SMC 18.70.060(C)(3) to show the location of the wetland boundary on a scaled drawing as a part of the permit application.
2. The planning director shall decide whether the scientists who perform the delineation of boundary requirement are retained by the applicant or by the city with the applicant paying the city for the costs in accordance with the provisions of SMC 18.70.060(C)(4). Where the delineation is performed under the planning director's direction, such delineation shall be considered a final determination.
3. Where the applicant has provided a delineation of the wetland boundary, the planning director shall verify the accuracy of, and may render adjustments to, the boundary delineation after consulting with a wetlands scientist and/or licensed civil engineer. In the event the adjusted boundary delineation is contested by the applicant, the director shall, at the applicant's expense, obtain expert services to render a final delineation. This shall apply to all developments except for a single-family residence.
D. Wetlands Rating System. The following Washington State rating system is hereby adopted as the rating system for the city. Wetlands buffer widths, replacement ratios, and avoidance criteria shall be based on these rating systems.
1. Washington State Four-Tier Wetlands Rating System:
a. Category I criteria:
i. Documented habitat for endangered or threatened fish or animal species or for potentially extirpated plant species recognized by state or federal agencies, or
ii. High-quality native wetland communities, including documented Category I or II quality natural heritage wetland sites and sites which qualify as a Category or II quality national heritage wetland, or iii. High-quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps, or iv. Wetlands of exceptional local significance. The criteria for such a designation shall be developed and adopted by the local jurisdiction under appropriate public review and administrative appeal procedures. The criteria may include, but not be limited to, rarity, ground water recharge areas, significant habitats, unique educational sites, or other specific functional values within a watershed or other regional boundary;
b. Category II criteria:
i. Regulated wetlands that do not contain features outlined in Category I, and
ii. Documented habitats for sensitive plant, fish, or animal species recognized by federal or state agencies, or

iii. Rare wetland communities listed in subsection (D)(l)(a)(iii) of this section which are not high-quality, or iv. Wetland types with significant functions which may not be adequately replicated through creation or restoration,
v. Regulated wetlands with significant habitat value based on diversity and size,
vi. Regulated wetlands contiguous with salmonid fish-bearing waters, including streams where flow is intermittent, or
vii. Regulated wetlands with significant use by fish and wildlife;
c. Category III criteria:
i. Regulated wetlands that do not contain features outlined in Category I, II, or IV;
d. Category IV Criteria:
i. Regulated wetlands which do not meet the criteria of a Category I or II wetland, and
ii. Isolated wetlands which are less than or equal to one acre in size, have only one wetland class, and have only one dominant native plant species (monotypic vegetation), or
iii. Isolated wetlands which are less than or equal to two acres in size, and have only one wetland class and a predominance of exotic species.
2. Wetland rating categories shall be applied as the regulated wetland exists on the date of adoption of the rating system by the local government; as the regulated wetland may naturally change thereafter; or as the regulated wetland may change in accordance with permitted activities. Wetland rating categories shall not be altered to recognize illegal modifications.
3. The city shall apply the latest version of the Washington State Department of Ecology, Washington State Wetlands Rating System for Rating the Resource Value of Regulated Wetlands, and Field Methodology as its procedures for the wetland rating system.
4. The city will initially rate wetlands based on information derived from available maps, reports, and similar materials. Wetlands may be reclassified into another category at a subsequent date should field surveys or other new materials warrant such action. (Ord. 630 § 1, 1992)

18.70.050 Regulated activities and allowed activities.
A. Regulated Activities. A permit shall be obtained from local government prior to undertaking the following activities in a regulated wetland or its buffer, unless authorized by subsection B of this section:
1. The removal, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter or material of any kind;
2. The dumping, discharging or filling with any material;
3. The draining, flooding or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition, or expansion of any structure;
7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning or planting of vegetation that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or
8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.
B. Allowed Activities. The following uses shall be allowed within a wetland or wetland buffer to the extent that they are not prohibited by any other ordinance or law and provided they are

conducted using best management practices, except where such activities result in the conversion of a regulated wetland or wetland buffer to a use to which it was not previously subjected, and provided further that forest practices and conversions shall be governed by Chapter 76.09 RCW and its rules:
1. Conservation or preservation of soil, water vegetation, fish, shellfish and other wildlife;
2. Outdoor recreational activities, including but not limited to fishing, birdwatching, hiking, boating, swimming, canoeing and bicycling;
3. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources;
4. Existing and ongoing agricultural activities, including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has laid idle so long that modifications to the hydrological regime are necessary to resume operations;
5. The maintenance (but not construction) of drainage ditches;
6. Education, scientific research and use of nature trails;
7. Navigation aids and boundary markers;
8. Boat-mooring buoys;
9. Site investigative work necessary for land use application submittals, such as surveys, soil logs and other related activities. In every case, wetland impacts shall be minimized and disturbed areas shall be immediately restored; and
10. The following uses are allowed within wetlands and/or wetland buffers provided that written notice at least 10 days prior to the commencement of such work has been given to the planning director, and provided that wetland impacts are minimized and that disturbed areas are immediately restored:
a. Normal maintenance, repair or operation of existing serviceable structures, facilities or improved areas. "Maintenance and repair" does not include any modification that changes the character, scope or size of the original structure, facility or improved area, and does not include the construction of a maintenance road, and b. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions.
C. Special Permit Uses. Any activity other than those specified in subsection B of this section may not be conducted in wetlands or wetland buffers except upon issuance of a wetland permit by the planning director. (Ord. 630 § 1, 1992)

18.70.060 Procedures for wetland permits.
A. Permit Requirements – Compliance.
Except as specifically provided in SMC 18.70.050(B), no regulated activity shall occur or be permitted to occur within a regulated wetland or wetland buffer without a written permit from the planning director. Any alteration approved by such written permit shall comply fully with the requirements and purposes of this chapter, other applicable regulations, and any terms or conditions of the permit. All activities which are not allowed or permitted shall be prohibited.
B. Wetland Permits – Extensions.
1. Application for a wetland permit to conduct any regulated activity not specifically authorized by SMC 18.70.050(B) within a wetland or wetland buffer shall be made to the planning director

on forms furnished by his/her office. Permits shall normally be valid for a period of three years from the date of issue and shall expire at the end of that time, unless a longer or shorter period is specified by the planning director upon issuance of the permit.

2. An extension of an original permit may be granted upon written request to the planning director by the original permit holder or the successor in title. A permit may be extended annually up to two years by paying a fee established by the planning director and ratified by the city council. Extensions of the original permit may be granted by the planning director upon written request and payment of the corresponding fees. Prior to the granting of an extension, the planning director shall require updated studies and/or additional hearings if, in his/her judgment, the original intent of the permit is altered or enlarged by the renewal; if the circumstances relevant to the review and issuance of the original permit have changed substantially; or if the applicant failed to abide by the terms of the original permit.

C. Permit Applications.

1. Request for Determination of Applicability. Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request in writing a determination from the planning director. Such a request for determination shall contain plans, data and other information as may be specified by the planning director.

2. Pre-Permit Consultations. Any person intending to apply for a wetland permit is strongly encouraged, but not required, to meet with the planning director during the earliest possible stages of project planning in order to discuss wetland impact avoidance and minimization and to discuss compensation, before large commitments have been made to a particular project design. Effort put into preapplication consultations and planning will help applicants create projects which will be more quickly and easily processed.

3. Information Requirements. Unless the planning director waives one or more of the following information requirements, applications for a wetland permit under this chapter shall include:

a. A description and maps at a scale no smaller than one inch equals 200 feet, showing the entire parcel of land owned by the applicant and the exact boundary of the wetland on the parcel pursuant to SMC 18.70.040(C);

b. A description of the vegetative cover of the wetland and adjacent area, including dominant species;

c. A site plan for the proposed activity overlaid on a map at a scale no smaller than one inch equals 200 feet, showing the location, width, depth and length of all existing and proposed structures, roads, sewage disposal and treatment, and installations within the wetland and its buffer;

d. The exact sites and specifications for all regulated activities, including the amounts and methods;

e. Elevations of the site and adjacent lands within the wetland and its buffer at contour intervals of no greater than five feet;

f. Top view and typical cross-section views of the wetland and its buffer, to scale;

g. The purposes of the project and an explanation of why the proposed activity cannot be located at other sites, including an explanation of how the proposed activity is dependent upon wetlands or water-related resources as described in SMC 18.70.070(D); and

h. Specific means to mitigate any potential adverse environmental impacts of the applicant's proposal. The planning director may require additional information, including but not limited to, an assessment of wetland functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic or other values of the wetland; a

~~study of flood, erosion or other hazards at the site, and the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter. The planning director shall maintain and make available to the public all information applicable to any wetland and its buffer.~~

~~4. Filing Fees. At the time of an application or request for delineation, the applicant shall pay a filing fee as determined by the planning director. Sufficient fees shall be charged to the applicant to cover the costs of evaluation of the application or request for delineation. These fees may be used by the planning director to retain expert consultants to provide services pertaining to wetland boundary determinations, functional assessments, and evaluation of mitigation measures. As deemed necessary by the planning director, the planning director may assess additional reasonable fees as needed to monitor and evaluate permit compliance and mitigation measures. A scope of work and fee estimate shall be provided to the applicant before proceeding with the delineation. Minimum and maximum fees shall be adopted by the city council following a public hearing.~~

~~5. Notification.~~

~~a. Upon receipt of the completed permit application, the planning director shall notify the individuals and agencies, including federal and state agencies, having jurisdiction over or an interest in the matter, to provide such individuals and agencies an opportunity to comment.~~

~~b. The planning director shall establish a mailing list of all interested persons and agencies who wish to be notified of such application.~~

~~6. Notice on Title.~~

~~a. The owner of any property with field-verified presence of wetland or wetland buffer pursuant to SMC 18.70.040(C), on which a development proposal is submitted, shall file for record with the county auditor a notice approved by the planning director in a form substantially as set forth in subsection (C)(6)(b) of this section. Such notice shall provide notice in the public record of the presence of a wetland or wetland buffer, the application of this chapter to the property, and that limitations on actions in or affecting such wetlands and their buffers may exist. The applicant shall submit proof that the notice has been filed for record before the city shall approve any development proposal for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.~~

~~b. Form of Notice.~~

~~WETLAND OR WETLAND BUFFER NOTICE~~

~~Legal Description _____~~

~~Present Owner: _____~~

~~NOTICE: This property contains wetlands or their buffers as defined by City of Sequim ordinance. The property was the subject of a development proposal for _____ (TYPE OF PERMIT) application #_____ filed on _____ (DATE). Restrictions on use or alteration of the wetlands or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of wetlands or wetland buffers and restrictions on their use through setback areas. A copy of the plan showing such setback areas is attached hereto.~~

~~_____ (signature of owner)~~

~~STATE OF WASHINGTON)~~

_____) SS:
COUNTY OF CLALLAM)
On this day personally appeared before me to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein stated.
Given under my hand and official seal this ____ day of _____, 19___.
NOTARY PUBLIC in and for the State of Washington, residing at _____
D. Permit Processing.
1. Consolidation. The planning director shall, to the extent practicable and feasible, consolidate the processing of wetlands-related aspects of other city regulatory programs which affect activities in wetlands, such as subdivision, clearing and grading, floodplain and environmentally sensitive areas, with the wetland permit process established herein so as to provide a timely and coordinated permit process.
2. Completeness of Application. No later than 20 working days after receipt of the permit application, the planning director shall notify the applicant as to the completeness of the application. An application shall not be deemed complete until and unless all information necessary to evaluate the proposed activity, its impacts, and its compliance with the provisions of this chapter have been provided to the satisfaction of the planning director. Such determination of completeness shall not be construed as an approval or denial of the permit application.
3. Public Hearings. Following the submittal of an application determined to be complete by the planning director, the planning commission shall hold a public hearing on the application, unless the planning director finds that the activity is so minor as to not adversely affect a wetland or wetland buffer.
a. For proposed amendments, notice shall be given by publication in a newspaper of general circulation in the city not less than 10 days before the date of the proposed hearing.
b. For proposed variances, conditional use permits, extraordinary use permits and amendments which involve the rezoning of property, notice shall be given by one publication in a newspaper of general circulation in the municipality and in the official publication of the city, if any, not less than 10 days before the date of the proposed hearing and by public posting in at least three conspicuous locations in the vicinity of the property involved. Owners of property lying within 300 feet of the property involved shall be sent notice of the pending action by United States mail. Such notice shall be given in time for the receivers to be informed not less than 10 days before the date of the proposed hearing. A list of the property owners within 300 feet shall be provided to the city building inspector by the applicant, and the building inspector shall confirm, as far as is practicable, the accuracy of the list submitted. Failure of a property owner to be notified by mail shall not constitute grounds for vacating the decision made, providing that posting and publication of notice as required in this section has occurred.
c. For appeals from an administrative decision, notice shall be given in writing to the appellant, the officer whose decision is being appealed, and to any adverse parties of record. Such notice shall be given in time for receivers to be informed not less than 10 days before the date of the proposed hearing.
4. Permit Action.
a. Upon receipt of a complete application for a permit authorizing activities on a Category I wetland or its buffer, the city shall submit the application to the State Department of Ecology for its review and comment. When such permits applications are submitted, the Department of Ecology should submit its comments or should request an extension of the review period within

30 days. Extensions may be up to 30 days in length. When submitted, no permit shall be issued under this subsection prior to receipt of such comments or the expiration of the time period or any extensions.
b. The planning commission shall approve, approve with conditions, or deny a permit application within 45 working days of the public hearing; except that where additional information is required by the planning commission, they may extend this period by 90 days. In acting on the application, the planning commission shall in writing deny, permit or conditionally permit the proposed activity. (Ord. 630 § 1, 1992)

18.70.070 Standards for permit decisions.
A. A permit shall only be granted if the permit, as conditioned, is consistent with the provisions of this chapter. Additionally, permits shall only be granted if:
1. A proposed action avoids adverse impacts to regulated wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
2. The proposed activity results in no net loss; or
3. Denial of a permit would cause an extraordinary hardship on the applicant.
B. Wetlands permits shall not be effective and no activity thereunder shall be allowed during the time provided to file a permit appeal.
C. Wetland Buffers.
1. Standard Buffer Zone Widths. Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field, pursuant to the applicable definitions in SMC 18.70.020. The width of the wetland buffer zone shall be determined according to wetland category and the intensity of the proposed land use. In an effort to remain consistent with the adjacent jurisdictions, the buffer zone widths shall be compatible with those set by the county, as follows:
a. Category I, 200 feet;
b. Category II, 100 feet;
c. Category III, 50 feet;
d. Category IV, 25 feet.
2. Increased Wetland Buffers Zone Width. The planning director shall require increased standard buffer zone widths on a case-by-case basis when a larger buffer is necessary to protect wetlands functions and values, based on local conditions. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the regulated wetland. Such determination shall be attached as a permit condition and shall demonstrate that:
a. A larger buffer is necessary to maintain viable populations of existing species; or
b. The wetland is used by species listed by the federal government or by the state as endangered or threatened, or as a critical habitat area for those species; or
c. The adjacent land is susceptible to severe erosion, and erosion control measures will not effectively prevent adverse wetland impacts; or
d. The adjacent land has minimal vegetative cover or slopes greater than 15 percent.
3. Reduction of Standard Wetland Buffer Zone Width. The planning director may reduce the standard wetland buffer zone widths on a case-by-case basis where it can be demonstrated that:

a. The adjacent land is extensively vegetated and has less than 15 percent slopes and that no direct or indirect, short-term or long-term adverse impacts to regulated wetlands, as determined by the planning director, will result from a regulated activity. The planning director may require long-term monitoring of the project and subsequent corrective actions if adverse impacts to regulated wetlands are discovered; or

b. The project includes a buffer enhancement plan using native vegetation which substantiates that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetlands functions and values. An enhanced buffer shall not result in greater than a 25 percent reduction in the buffer width, and the reduced buffer shall not be less than 25 feet.

4. Standard Wetland Buffer Width Averaging. Standard wetland buffer zones may be modified by averaging buffer widths. Wetland buffer width averaging shall be allowed only where the applicant demonstrates all of the following:

a. That averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property;

b. That the wetland contains variations in sensitivity due to existing physical characteristics;

c. That low-intensity land uses would be located adjacent to areas where buffer width is reduced, and that such low-intensity land uses are guaranteed in perpetuity by covenant, deed restriction, easement or other legally binding mechanism;

d. That width averaging will not adversely impact the wetland functional values; and

e. That the total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging. In no instance shall the buffer width be reduced by more than 50 percent of the standard buffer or be less than 25 feet.

5. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation may be required.

6. Permitted Uses in a Wetland Buffer Zone. Regulated activities shall not be allowed in a buffer zone except for the following:

a. Activities having minimal adverse impacts on buffers and no adverse impacts on regulated wetlands. These may include lowintensity, passive recreational activities such as pervious trails, nonpermanent wildlifewatching blinds, short-term scientific or educational activities and sports fishing or hunting;

b. With respect to Category III and IV wetlands, storm water management facilities having no reasonable alternative on-site location; or

c. with respect to Category III and IV wetlands, development having no feasible alternative location.

7. Building Setback Lines. A building setback line of 15 feet is required from the edge of any wetland buffer. Minor structural intrusions into the area of the building setback may be allowed if the planning director determines that such intrusions will not negatively impact the wetland. The setback shall be identified on a site plan which is filed as an attachment to the notice on title required by SMC 18.70.060(C)(6).

D. Avoiding Wetland Impacts.

1. Regulated activities shall not be authorized in a regulated wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied.

2. With respect to Category I wetlands, an applicant must demonstrate that denial of the permit

would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.

3. With respect to Category II and III wetlands, the following provisions shall apply:

a. For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences.

b. Where non-water-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:

i. The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and

ii. A reduction in the size, scope, configuration or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and

iii. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints.

4. With respect to Category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the basic purpose of the project.

E. Reasonable Use Exception.

1. If an applicant for a development proposal demonstrates to the satisfaction of the planning director that application of these standards would deny all reasonable economic use of the property, development as conditioned may be allowed if the applicant also demonstrates all of the following to the satisfaction of the planning director:

a. That the proposed project is waterdependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative, pursuant to subsection D of this section.

b. That no reasonable use with less impact on the wetland and its buffer is possible (e.g., agriculture, aquaculture, transfer or sale of development rights or credits, sale of open space easements, etc.);

c. That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related siteplanning considerations, that would allow a reasonable economic use with less adverse impacts to wetlands and wetland buffers;

d. That the proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources and hydrological conditions;

e. That disturbance of wetlands has been minimized by locating any necessary alteration in wetland buffers to the extent possible;

f. That the proposed activities will not jeopardize the continued existence of endangered and threatened species as listed by the federal government or the state of Washington;

g. That the proposed activities will not cause significant degradation of ground water or surface water quality;

h. That the proposed activities comply with all state, local, and federal laws, including those related to sediment control, pollution control, floodplain restrictions and on-site wastewater disposal;
i. That any and all alterations to wetlands and wetland buffers will be mitigated as provided in subsection (H)(7) of this section except those required for a single-family dwelling;
j. That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and
k. That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of the ordinance codified in this chapter.
2. If the planning director determines that alteration of a wetland and/or wetland buffer is necessary and unavoidable, the planning director shall set forth in writing in the file he maintains regarding a permit application his findings with respect to each of the items listed in this subsection E.
3. Alternatively, if the planning director determines that application of these standards would deny all reasonable economic use of the property, the city may take the property for public use with just compensation being made.
F. Minimizing Wetlands Impacts. After it has been determined by the planning director pursuant to subsection D of this section that losses of wetland are necessary and unavoidable or that all reasonable economic use has been denied, the applicant shall take deliberate measures to minimize wetland impacts.
2. Minimizing impacts to wetlands shall include but is not limited to:
a. Limiting the degree or magnitude of the regulated activity;
b. Limiting the implementation of the regulated activity;
c. Using appropriate and best available technology;
d. Taking affirmative steps to avoid or reduce impacts;
e. Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;
f. Involving resource agencies early in site planning; and
g. Providing protective measures, such as siltation curtains, hay bales, and other siltation prevention measures; and scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities.
G. Limited Density Transfer.
1. For development proposals on lands containing wetland buffers, the planning director shall determine allowable dwelling units for residential development proposals based on the formulas below.
2. The following formula for density calculations is designed to provide incentives for the preservation of wetlands and wetland buffers, flexibility in design, and consistent treatment of different types of development proposals. The formula shall apply to all properties within existing residential zones on which wetlands and wetland buffers are located.
3. The maximum number of dwelling units (DU) for a lot or parcel which contains wetlands and wetland buffers shall be equal to: (Acres in Wetland Buffer) (DU/Acre) (Density Credit).
4. The density credit figure is derived from the following table:

Percentage of Site Permitted Density in Buffers of Overall Site
1 – 10% 100%
11 – 20% 90%

21 – 30% 80%
31 – 40% 70%
41 – 50% 60%
51 – 60% 50%
61 – 70% 40%
71 – 80% 30%
81 – 90% 20%
91 – 99% 10%

5. The density credit can only be transferred within the development proposal site. To the extent that application of the formula may result in lot sizes less than the minimum allowed by the underlying district, they are hereby authorized, provided that the resultant lot is of sufficient size for an on-site waste disposal system if no sanitary sewer system exists. Should the density credit allow average lot size to fall below the minimum standard allowed by underlying zoning, the applicant shall use planned residential development procedures for project review.The planning director shall not allow credit for density for the portions of the site occupied by wetlands.

H. Acting on the Application.

1. Special Use Permit Conditions.

a. Sensitive Area Tracts. As a condition of any permit issued pursuant to this chapter, the permit holder shall be required to create a separate sensitive area tract or tracts containing the areas determined to be wetland and/or wetland buffer in field investigations performed pursuant to subsection C of this section. Sensitive area tracts are legally created tracts containing wetlands and their buffers that shall remain undeveloped except as provided for in this chapter. Sensitive area tracts are an integral part of the lot in which they are created; are not intended for sale, lease or transfer; and shall be included in the area of the parent lot for purposes of subdivision method and minimum lot size.

i. Protection of Sensitive Area Tracts. The planning director shall require, as a condition of any permit issued pursuant to this chapter, that the sensitive area tract or tracts created pursuant to subsection (H)(1) of this section be protected by the following method: the permit holder shall establish and record a permanent and irrevocable deed restriction on the property title of all lots containing a sensitive area tract or tracts created as a condition of this permit. Such deed restriction(s) shall prohibit in perpetuity the development, alteration or disturbance of vegetation within the sensitive area tract, except for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from the city and any other agency with jurisdiction over such activity.

b. The deed restriction shall also contain the following language:

Before beginning and during the course of any grading, building construction, or other development activity on a lot or development site subject to this deed restriction, the common boundary between the area subject to the deed restriction and the area of development activity must be fenced or otherwise marked to the satisfaction of the City of Sequim.

c. Regardless of the legal method of protection chosen by the planning director, responsibility for maintaining sensitive area tracts shall be held by a homeowners association, adjacent lot owners, the permit applicant or designee, or other appropriate entity as approved by the planning director.

d. The following note shall appear on the face of all plats, short plats, PUDs, or other approved site plans containing separate sensitive area tracts, and shall be recorded on the title of record for all affected lots:

NOTE: All owners of lots adjoining separate sensitive area tracts identified and protected by deed restriction, are responsible for maintenance and protection of the tracts. Maintenance includes ensuring that no alterations occur within the separate tract and that all vegetation remains undisturbed for other than natural reasons, unless the express written authorization of the City of Sequim has been received.

e. The common boundary between a separate sensitive area tract and the adjacent land should be permanently identified. This identification shall include permanent wood or metal signs on treated or metal posts. Signs shall be worded as follows:

Protection of this natural area is in your care. Alteration or disturbance is prohibited by law. Please call the Sequim Planning Department for more information.

f. Sign locations and size specifications shall be approved by the planning director. The planning director shall require permanent fencing of the sensitive area tract or tracts when there is a substantial likelihood of the presence of domestic grazing animals within the development proposal. The planning director shall also require as a permit condition that such fencing be provided if, subsequent to approval of the development proposal, domestic grazing animals are in fact introduced.

g. Additional Conditions.

i. The location of the outer extent of the wetland buffer and the areas to be disturbed pursuant to an approved permit shall be marked in the field, and such field marking shall be approved by the planning director prior to the commencement of permitted activities. Such field markings should be maintained throughout the duration of the permit.

ii. The planning director may attach such additional conditions to the granting of a special use permit as deemed necessary to assure the preservation and protection of affected wetlands and to assure compliance with the purposes and requirements of this chapter.

2. Bonding.

a. Performance Bonds. The planning director may require the applicant of a development proposal to post a cash performance bond or other security acceptable to the planning director and the city clerk in an amount and with surety and conditions sufficient to fulfill the requirements of subsection (H)(6) of this section and, in addition, to secure compliance with other conditions and limitations set forth in the permit. The amount and the conditions of the bond shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such bond, the city may institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution. The planning director shall release the bond upon determining the following, provided that prior to such written release of the bond, the principal or surety cannot be terminated or canceled:

i. All activities, including any required compensatory mitigation, have been completed in compliance with the terms and conditions of the permit and the requirements of this chapter;

ii. The posting by the applicant of a maintenance bond, if required, has occurred.

b. Maintenance Bonds. The planning director shall require the holder of a development permit issued pursuant to this chapter to post a cash performance bond or other security acceptable to the planning director in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the permit or by this chapter perform satisfactorily for a minimum of two years after they have been completed. The planning director shall release the maintenance bond upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements and/or compensatory mitigation have been satisfactorily met for the required period. For compensation projects, the

performance standards shall be those contained in the mitigation plan developed and approved during the permit review process, pursuant to subsection (H)(7) of this section. The maintenance bond applicable to a compensation project shall not be released until the planning director determines that performance standards established for evaluating the effect and success of the project have been met.

3. Other Laws and Regulations. No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state or local law or regulation, including but not limited to the acquisition of any other required permit or approval.

4. Suspension or Revocation. In addition to other penalties provided for elsewhere, the planning director may suspend or revoke a permit if he/she finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the permit; has exceeded the scope of work set forth in the permit; or has failed to undertake the project in the manner set forth in the approved application.

5. Publication of Notice. The planning director shall cause notice of his/her denial, issuance, conditional issuance, revocation or suspension of a permit to be published in the official city newspaper having a broad circulation in the area wherein the wetland lies. Such notice shall be published within 10 working days of the decision or order and shall include at least the following:

a. A brief description of the project, including location;

b. The decision or order of the city with respect to the project;

c. Notification that the permit file is open for public inspection during regular business hours, and the address where such file may be inspected; and

d. A statement of the procedures regarding appeal or judicial review of the decision, if applicable.

6. Compensating for Wetlands Impacts.

As a condition of any permit allowing alteration of wetlands and/or wetland buffers, or as an enforcement action pursuant to SMC 18.70.080(C), the planning director shall require that the applicant engage in the restoration, creation or enhancement of wetlands and their buffers in order to offset the impacts resulting from the applicant's or violator's actions. The applicant shall develop a plan which provides for land acquisition, construction, maintenance and monitoring of replacement wetlands that recreate as nearly as possible the original wetlands in terms of acreage, function, geographic location and setting, and that are larger than the original wetlands. The overall goal of any compensatory project shall be no net loss of wetlands function and acreage and to strive for a new resource gain in wetlands over present conditions. Compensation shall be completed prior to wetland destruction, where possible. Compensatory mitigation shall follow an approved mitigation plan pursuant to subsection (H)(7) of this section and shall meet the following minimum performance standards:

a. Given the uncertainties in scientific knowledge and the need for expertise and monitoring, wetland compensatory projects may be permitted only when the planning director finds that the compensation project is associated with an activity or development otherwise permitted and that the restored, created or enhanced wetland will be as persistent as the wetland it replaces. Additionally, applicants shall:

i. Demonstrate sufficient scientific expertise, supervisory capability, and financial resources to carry out the project;

ii. Demonstrate the capability for monitoring the site and to make corrections during this period if the project fails to meet projected goals; and
iii. Protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for long-term persistence of the compensation area.
b. Wetlands Restoration and Creation.
i. Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses.
ii. Where feasible, restored or created wetlands shall be a higher category than the altered wetland.
iii. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be selfsustaining, and projected success. Wetland functions and values shall be calculated using the best professional judgment of a qualified wetland ecologist using the best available techniques. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss.
iv. Acreage Replacement Ratio.
The following ratios apply to creation or restoration which is in-kind, on-site, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from illegal alterations. The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered:
Category I 6:1
Category II or III
Forested 3:1
Scrub-shrub 2:1
Emergent 1.5:1
Category IV 1.25:1
(A) Increased Replacement Ratio. The planning director may increase the ratios under the following circumstances:
(1) Uncertainty as to the probable success of the proposed restoration or creation;
(2) Significant period of time between destruction and replication of wetland functions;
(3) Projected losses in functional value; or
(4) Off-site compensation.
(B) Decreased Replacement Ratio. The planning director may decrease these ratios based on findings of special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value is attained under the decreased ratio.
(C) In all cases, a minimum acreage replacement ratio of one to one (1: 1) shall be required.
c. Wetlands Enhancement.
i. Any applicant proposing to alter wetlands may propose to enhance existing significantly degraded wetlands in order to compensate for wetland losses. Applicants proposing to enhance wetlands shall identify how enhancement conforms to the overall goals and requirements of the local wetlands protection program and established regional goals.
ii. A wetlands enhancement compensation project shall be determined pursuant to subsection (H)(6) of this section, provided that enhancement for one function and value will not degrade another function or value and that acreage replacement ratios shall be doubled to recognize existing functional values and, provided further, that Category I wetlands shall not be enhanced.
d. Wetland Type.

i. On-site compensation shall be provided except where the applicant can demonstrate that:
(A) The hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the on-site loss; and
(B) On-site compensation is not scientifically feasible due to problems with hydrology, soils, waves or other factors; or
(C) Compensation is not practical due to potentially adverse impact from surrounding land uses; or
(D) Existing functional values at the site of the proposed restoration are significantly greater than lost wetland functional values;
or
(E) Established regional goals for flood storage, flood conveyance, habitat or other wetland functions have been established and strongly justify location of compensatory measures at another site,
ii. Off-site compensation shall occur within the same watershed as the wetland loss occurred; provided that Category IV wetlands may be replaced outside of the watershed when there is no reasonable alternative.
iii. In selecting compensation sites, applicants shall pursue siting in the following order of preference:
(A) Upland sites which were formerly wetlands;
(B) Idled upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds or emergent vegetation;
(C) Other disturbed upland.
f. Timing.
i. Where feasible, compensation projects shall be completed prior to activities that will disturb wetlands, and immediately after activities that will temporarily disturb wetlands. In all other cases, except for Category I wetlands, compensatory projects should be completed prior to use or occupancy of the activity or development which was conditioned upon such compensation. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and flora.
g. Cooperative Restoration, Creation, or Enhancement Projects.
i. The planning director may encourage, facilitate, and approve cooperative projects wherein a single applicant or other organization with demonstrated capability may undertake a compensation project with funding from other applicants under the following circumstances:
(A) Restoration, creation, or enhancement at a particular site may be scientifically difficult or impossible; or (B) Creation of one or several larger wetlands may be preferable to many small wetlands.
ii. Persons proposing cooperative compensation projects shall:
(A) Submit a joint permit application;
(B) Demonstrate compliance with all standards;
(C) Demonstrate the organizational and fiscal capability to act cooperatively; and
(D) Demonstrate that long-term management can and will be provided.
7. Mitigation Plans. All wetland restoration, creation and/or enhancement projects required pursuant to this chapter, either as a permit condition or as the result of an enforcement action, shall follow a mitigation plan prepared by qualified wetland professionals approved by the planning director. The applicant or violator shall receive written approval of the mitigation plan by the planning director prior to commencement of any wetland restoration, creation or

~~enhancement activity. Unless the planning director, in consultation with qualified wetland professionals, determines, based on the size and nature of the development proposal, the nature of the impacted wetland and the degree of cumulative impacts on the wetland from other development proposals, that the scope and specific requirements of the mitigation plan may be reduced from what is listed below, the mitigation plan shall contain at least the following components:~~

~~a. Baseline Information. A written assessment and accompanying maps of the:~~

~~i. Impacted wetland including, at a minimum, wetland delineation; existing wetland acreage; vegetative, faunal, and hydrologic characteristics; soil and substrate conditions; topographic elevations; and~~

~~ii. Compensation site, if different from the impacted wetland site, including, at a minimum, existing acreage; vegetative, faunal, and hydrologic conditions; relationship within watershed and to existing water bodies; soil and substrate conditions; topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership.~~

~~b. Environmental Goals and Objectives. A written report shall be provided identifying goals and objectives and describing:~~

~~i. The purposes of the compensation measures, including a description of site selection criteria; identification of compensation goals; identification of target evaluation species and resource functions; dates for beginning and completion; and a complete description of the structure and functional relationships sought in the new wetland. The goals and objectives shall be related to the functions and values of the original wetland, or if out-of kind, the type of wetland to be emulated;~~

~~ii. A review of the available literature and/or experience to date in restoring or creating the type of wetland proposed shall be provided. An analysis of the likelihood of success of the compensation project at duplicating the original wetland shall be provided based on the experiences of comparable projects, if any. An analysis of the likelihood of persistence of the created or restored wetland shall be provided based on such factors as surface water and ground water supply and flow patterns; dynamics of the wetland ecosystem; sediment or pollutant influx and/or erosion, periodic flooding and drought, etc.; presence of invasive flora and fauna; potential human or animal disturbance; and previous comparable projects, if any.~~

~~c. Performance Standards. Specific criteria for the mitigation plan shall be provided by the proponent for evaluation as to whether or not the purposes of this chapter are met by the proposed project, including remedial actions or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological, or hydrological criteria.~~

~~d. Detailed Construction Plans. Written specifications and descriptions of compensation techniques shall be provided, including the proposed construction sequence; grading and excavation details; erosion and sediment control features needed for wetland construction and long-term survival; a planting plan specifying plant species, quantities, locations, size, spacing and density; source of plant materials, propagules or seeds; water and nutrient requirements for planting; where appropriate, measures to protect plants from predation; specification of substrate stockpiling techniques and planting instructions; descriptions of water control structures and water-level maintenance practices needed to achieve the necessary hydrocycle/hydroperiod characteristics; etc. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated~~

~~final outcome. The plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data.~~
~~e. Monitoring Program. A program outlining the approach for monitoring construction of the compensation project and for assessing a completed project shall be provided. Monitoring may include, but is not limited to:~~
~~i. Establishing vegetation plots to track changes in plant species composition and density over time;~~
~~ii. Using photo stations to evaluate vegetation community response;~~
~~iii. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);~~
~~iv. Measuring base flow rates and storm water runoff to model and evaluate water quality predictions, if appropriate;~~
~~v. Measuring sedimentation rates, if applicable; and~~
~~vi. Sampling fish and wildlife populations to determine habitat utilization, species abundance, and diversity. A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the compensation project. A monitoring report shall be submitted annually, at a minimum, documenting milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years.~~
~~f. Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.~~
~~g. Permit Conditions. Any compensation project prepared pursuant to this section and approved by the planning director shall become part of the application for the permit.~~
~~h. Performance Bonds and Demonstration of Competence. A demonstration of financial resources, administrative, supervisory and technical competence, and scientific expertise of sufficient standard to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training and experience with comparable projects. In addition, bonds ensuring fulfillment of the compensation project, monitoring program, and any contingency measure shall be posted pursuant to this subsection in the amount of 120 percent of the expected cost of compensation.~~
~~i. Regulatory authorities are encouraged to consult with and solicit comments of any federal, state, regional or local agency, including tribes, having any special expertise with respect to any environmental impact prior to approving a mitigation proposal which includes wetlands compensation. The compensation project proponents should provide sufficient information on plan design and implementation in order for such agencies to comment on the overall adequacy of the mitigation proposal.~~
~~j. Compensatory mitigation is not required for regulated activities:~~
~~i. For which a permit has been obtained, that occur only in the buffer or expanded buffer and which have no adverse impacts to regulated wetlands; or~~
~~ii. Which are allowed pursuant to SMC 18.70.050(B), provided such activities utilize best management practices to protect the functions and values of regulated wetlands.~~

I. Appeals. Any decision of the planning director or the planning commission in the administration of this chapter may be appealed in writing to the city council within 15 days of the issuance of notice of the decision.
J. Modification of Wetland Permits. A wetland permit holder may request and the planning director may approve modification of a previously issued wetland permit.
K. Resubmittal of Denied Permit Applications. A wetland permit application which has been denied may be modified and resubmitted no earlier than 180 days following action on the original application. A permit application shall be considered a resubmittal if the site proposed for development was the subject of a wetland permit application within the previous 180 days. A new fee will be required for such resubmittal. (Ord. 630 § 1, 1992)

18.70.080 Temporary, emergency permit – Enforcement.
A. Temporary Emergency Permit. Notwithstanding the provisions of this chapter or any other laws to the contrary, the planning director may issue a temporary emergency wetlands permit if:
1. The planning director determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and
2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this chapter and other applicable laws.
B. Standards and Criteria.
1. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this act and shall:
a. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and
b. Require, within this 90-day period, the restoration of any wetland altered as a result of the emergency activity; except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.
2. Issuance of an emergency permit by the planning director does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities.
3. Notice of the issuance of the emergency permit and request for public comments shall be published in a newspaper having a general circulation in the city, the city publication to be no later than 14 days after issuance of the emergency permit.
4. The emergency permit may be terminated at any time without process upon a determination by the planning director that the action was not or is no longer necessary to protect human health or the environment.
C. Enforcement. 1. General Enforcement. The city shall have authority to enforce this chapter, any rule or regulation adopted, and any permit or order issued pursuant to this chapter against any violation or threatened violation thereof. The city is authorized to issue violation notices and administrative orders, levy fines and/or institute legal action in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of the chapter, or any rule or regulation adopted, or any permit, permit condition or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees and expenses in connection with enforcement actions may be recovered as damages against the violator.

~~Enforcement actions shall include civil penalties, administrative orders and actions for damages and restoration.~~

~~2. Injunctive Relief. The city may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a regulated wetland or its buffers which are inconsistent with this chapter or an applicable wetlands protection program.~~

~~3. Cease and Desist Order. a. The city may serve upon a person a cease and desist order if an activity being undertaken on regulated wetlands or their buffer is in violation of this chapter or any permit issued to implement this chapter. Whenever any person violates this chapter or any permit issued to implement this chapter, the city may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.~~

~~b. Content of order. The order shall set forth and contain:~~

~~i. A description of the specific nature, extent, and time of violation and the damage or potential damages;~~

~~ii. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific correction action to be taken within a given time. A civil penalty may be issued with the order;~~

~~iii. Effective date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed;~~

~~iv. Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.~~

~~4. Penalties. Any person who undertakes any activity within a regulated wetland or its buffer without first obtaining a permit required by this chapter, except as allowed in SMC 18.70.050(B), or any person who violates one or more conditions of any permit required by this chapter or of any order issued pursuant to this section, shall incur a penalty allowed per violation. In the case of a continuing violation, each permit violation and each day of activity without a required permit shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the county superior court.~~

~~5. Aiding or Abetting. Any person who, through an act of commission or omission, procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty.~~

~~6. Notice of Penalty. Civil penalties imposed under this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department and/or the city, or from both jointly. The notice shall describe the violation, the approximate date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary correction action within a specific time.~~

~~7. Application for Remission or Mitigation. A person incurring a penalty may apply in writing within 30 days of receipt of the penalty to the planning director for remission or mitigation of such penalty. Upon receipt of the application, the city may remit or mitigate the penalty upon demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.~~

~~8. Appeals. Orders and penalties issued pursuant to this subsection may be appealed as provided for in SMC 18.70.070(I).~~

9. Misdemeanor criminal penalties shall be imposed on any person who wilfully or negligently violates this chapter or who knowingly makes a false statement, representation or certification in an application, record or other document filed or required to be maintained under this chapter; or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or record of methodology required to be maintained pursuant to this chapter and pursuant to a wetland permit. (Ord. 630 § 1, 1992)

18.70.090 Nonconforming activities.

A regulated activity which was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval, but which is not in conformity with the provisions of this chapter, may be continued subject to the following:

A. No such activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its nonconformity without a permit issued pursuant to the provisions of this chapter;

B. Except for cases of discontinuance as part of normal agricultural practices, if a nonconforming activity is discontinued for 12 consecutive months, any resumption of the activity shall conform to this chapter;

C. If a nonconforming use or activity is destroyed by accidental human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter, except a single-family residence may be rebuilt;

D. Activities or adjuncts thereof which are or become public nuisances shall not be entitled to continue as nonconforming activities. (Ord. 630 § 1, 1992)

18.70.100 Judicial review.

A. Any decision or order issued by the city pursuant to this chapter, including decisions concerning denial, approval or conditional approval of a wetland permit, may be judicially reviewed in the county superior court; provided, that:

1. Available administrative remedies, including appeals available pursuant to SMC 18.70.060(I), have been exhausted; and

2. Such litigation is commenced within 15 days after service of such order or issuance of notice of such decision, as the case may be.

B. Based on these proceedings and consistent with any decision of the court that is adverse to the city, the city may elect to:

1. Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land;

2. Approve the permit application with less restrictions or conditions; or

3. Other appropriate actions ordered by the court that fall within the jurisdiction of the city. (Ord. 630 § 1, 1992)

18.70.110 Amendments.

These regulations and the maps used to identify wetland critical areas may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning wetlands location, soils, hydrology, flooding or wetland plants and wildlife become available. (Ord. 630 § 1, 1992)

18.70.120 Assessment relief.

~~The county assessor shall consider wetland regulations in determining the fair market value of land. Any owner of an undeveloped wetland who has dedicated an easement or entered into a perpetual conservation restriction with the city or a nonprofit organization to permanently control some or all regulated activities in the wetland shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the controlled wetland and defray the cost of municipal improvements such as sanitary sewer and storm sewers, and water mains. (Ord. 630 § 1, 1992)~~

Chapter 18.80 CRITICAL AND ENVIRONMENTALLY SENSITIVE AREAS PROTECTION

Sections:

18.80.010 ~~Findings of fact.~~

~~The city council finds that:~~

~~A. Development in stream corridors can result in:~~

~~1. Siltation of streams, which destroys spawning beds, kills fish eggs and alevins, irritates fish gills, reduces aquatic insect populations, fills stream channels, and causes flooding,~~

~~2. Loss of stream corridor vegetation, which raises stream temperatures, destabilizes streambanks, causes erosion, removes nutrients by removing sources of fallen leaves and streamside insects, increases sedimentation, and reduces recruitment of large wood debris necessary for stream structure,~~

~~3. Elimination of Wildlife and Fish Habitat. The stream corridor is especially sensitive and is recognized as being among the most productive terrestrial and aquatic ecosystems. It usually provides all four of the basic habitat components, water, food, cover and space. The stream corridor is usually richer in habitat diversity and, consequently, wildlife diversity, and numbers of individuals are higher than in adjoining upland plant communities. Certain fish and wildlife species are totally dependent on the stream corridor and, as uplands are developed, stream corridors become a place of refuge for many wildlife species,~~

~~4. Increased peak flow rates and decreased summer low-flow rates of streams, resulting in negative impacts to the physical and chemical requirements critical for sustained fish populations,~~

~~5. Stream channelization, which increases current velocity and bank erosion, removes critical fish rearing and spawning habitat, and reduces habitat diversity and simplifies the biotic community,~~
~~6. Piping of stream flow and crossing of streams by culverts, which increases potential for downstream flooding, reduces migratory fishery range and, therefore, fish populations, removes habitat, and eliminates the biotic community, and~~
~~7. Construction near or within streams, which adversely impacts fish and wildlife by destroying habitat and degrading water quality and increases potential for flooding, property damage, and risk to public health, safety and welfare;~~
~~B. Development of geological (erosion hazard, landslide hazard, seismic hazard) hazard areas and steep slopes results in:~~
~~1. Potential threat to the health and safety of residents and employees of businesses within the city,~~
~~2. Potential damage or loss to public and private property within the city,~~
~~3. Potential degradation or loss to public and private property within the city,~~
~~4. Potential degradation of water quality and the physical characteristics of waterways due to increased sedimentation,~~
~~5. Potential losses to the public as a result of increased expenditures for replacing or repairing public facilities; providing publicly funded facilities to reduce or eliminate potential hazards to life and property; providing emergency rescue and relief operations; and from potential litigation resulting from incompatible development in these areas;~~
~~C. Development in fish and wildlife habitat areas results in:~~
~~1. Losses in the numbers and varieties of aquatic and terrestrial wildlife species,~~
~~2. Loss of streamside vegetation, which increases erosion and sedimentation and reduces the quality of water resources,~~
~~3. Loss of opportunities for outdoor recreation, such as hunting, fishing, birdwatching, sightseeing and similar activities,~~
~~4. Loss of economic opportunities in forestry, fisheries, shellfish and tourism industries,~~
~~5. Loss of opportunities for scientific research and education;~~
~~D. Development of locally unique land features (ravines, marine bluffs, beaches) results in:~~
~~1. Disruption of the natural functioning of region surface-drainage systems and the aquatic and terrestrial wildlife that depend on this habitat,~~
~~2. Increased threat to life and property as a consequence of exposure to geologic hazards and flooding,~~
~~3. Disruption of natural longshore drift processes that help maintain existing tidal and beach physical systems,~~
~~4. Destruction of natural greenbelts that serve to enhance the visual character of the community and serve as "community separators" that reduce the perceived degree of urbanization,~~
~~5. Loss of opportunities for trail systems and other forms of passive recreation. (Ord. 631 § 1, 1992)~~

~~18.80.020~~ Purpose ~~of provisions.~~

Wetlands, streams, flood hazards, geologic hazards (erosion, landslide, seismic), steep slopes, fish and wildlife habitat areas, locally unique features (ravines, marine bluffs, beaches) and protective buffers, and critical aquifer recharge areas constitute ~~environmentally sensitive~~critical areas that are of special concern to the city. The purpose of this chapter is to protect critical areas

~~the environmentally sensitive resources of the community on an interim basis~~ as required by the Growth Management Act and as provided in the guidelines promulgated by the Washington Department of Commerce ~~Community Development~~. Accordingly, the intent of this chapter is to use a performance-based approach and establish minimum standards for development of properties ~~which~~ that contain or adjoin ~~environmentally sensitive features~~ critical areas and to protect the public health, safety and welfare in regard to ~~environmentally sensitive~~critical areas by:

A. Mitigating unavoidable impacts by regulating alterations;

B. Protecting from impacts of development by regulating alterations;

C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events or soil subsidence;

D. Protecting against publicly financed expenditures in the event ~~environmentally sensitive~~critical areas are misused, which causes:

1. Unnecessary maintenance and replacement of public facilities,
2. P~~p~~ublicly funded mitigation of avoidable impacts,
3. Cost for public emergency rescue and relief operations where the causes are avoidable, or
4. Degradation of the natural environment;

E. Protecting the public trust in navigable waters and as to aquatic resources;

F. Preventing adverse impacts to water availability, water quality and streams;

G. Protecting unique, fragile and valuable elements of the environment, including wildlife and its habitat;

H. Alerting appraisers, assessors, owners, potential buyers or lessees to the development limitations of ~~environmentally sensitive~~critical areas;

I. Providing city officials with sufficient information to adequately protect ~~environmentally sensitive~~critical areas when approving, conditioning or denying public or private development proposals; and

J. Implementing the policies of the State Environmental Policy Act, Chapter 43.21C RCW; the city comprehensive plan; this chapter; and all updates and amendments, functional plans, and other land use policies formally adopted or accepted by the city;

~~K. Providing protection of environmentally sensitive areas for an interim period until the city can complete more detailed studies of the environmentally sensitive areas within the city and adopt a comprehensive set of policies pertaining to protection of environmental resources and amend regulations which implement the policies. (Ord. 631 § 1, 1992)~~

18.80.030 Definitions.

For the purposes of this chapter, the following definitions shall apply:

"Anadromous" - Fish that live part or the majority of their lives in saltwater, but return to freshwater to spawn.

"Beaches and associated coastal-drift process areas" means the areas that encompass marine shorelines ~~which~~ that contain important sites of material supply, transport and deposition that define the present landforms and natural character of the Sequim shoreline.

"Best management practices" means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and
2. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical and biological characteristics of wetlands.

"Category I wetlands" means wetlands that 1) represent a unique or rare wetland type; 2) are more sensitive to disturbance than most wetlands; 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of functions. This category includes: relatively undisturbed estuarine wetlands of 1 or more acres; national heritage wetlands; bogs; mature forested wetlands of 1 or more acres; wetlands in coastal lagoons; and high-functioning wetlands that score 70 or more points on a scale of 1-100 on the Dept. of Ecology's Wetland Rating System for Western Washington, publication 04-06-025.

"Category II wetlands" means wetlands that may have some level of disturbance, but still retain high function in some areas. This category includes, but is not limited to: estuarine wetlands less than 1 acre or those that have been disturbed and are greater than 1 acre; interdunal wetlands greater than 1 acre; and wetlands that score 51-69 points on a scale of 1-100 on the Dept. of Ecology's Wetland Rating System for Western Washington, publication 04-06-025.

"Category III wetlands" means wetlands that score 30-50 points on a scale of 1-100 on the Dept. of Ecology's Wetland Rating System for Western Washington, publication 04-06-025.

"Category IV wetlands" means wetlands that have low functions and score less than 30 points on a scale of 1-100 on the Dept. of Ecology's Wetland Rating System for Western Washington, publication 04-06-025.

"Closed stream segments" are those segments of streams, regardless of their type, that are fully enclosed in an underground pipe or culvert.

"Compensatory mitigation" means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:

1. "Creation," meaning actions performed to establish wetland functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.
2. "Restoration," meaning actions performed to reestablish or rehabilitate wetland functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.
3. "Enhancement," meaning actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

"Critical areas" and "environmentally sensitive areas" means and includes any of the following areas and ecosystems:

1. Wetlands;

2. Streams or stream corridors;
3. Frequently flooded areas;
4. Geologically hazardous areas:
    a. Erosion hazard areas,
    b. Landslide hazard areas,
    c. Seismic hazard areas;
5. ~~Significant F~~fish and wildlife habitat conservation areas; and
6. Locally unique features:
    a. Ravines,
    b. Marine bluffs,
    c. Beaches and associated coastal drift processes~~; and~~
7. Critical Aquifer Recharge Areas; and
8. Buffers as established under SMC 18.80.070.

"Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

"Erosion hazard areas" means those areas containing soils which, according to the United States Department of Agriculture Soil Conservation Service Soil Classification System, may experience severe to very severe erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

"Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Locally important habitats are also included.

"Frequently flooded areas" means lands in the floodplain subject to a one-percent or greater chance of flooding in any given year (the 100-year storm flood). These areas include but are not limited to the floodplains of streams, rivers, lakes, coastal areas, wetlands, and the like.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological event, are not normally suited to siting commercial, residential or industrial development consistent with public health or safety concerns.
~~"Habitats of local importance" means a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or" high vulnerability to alteration, such as cliffs, talus and wetlands.~~

"Land Use Permit" means a permit or action required to be approved by the City to allow the development of a parcel of property.

"Landslide hazard areas" means areas potentially subject to risk of mass movement due to a combination of geologic, topographic and hydrologic factors. The following areas are considered to be subject to landslide hazards:

1. Areas of historic failures or potentially unstable slopes, such as areas mapped within Soil Conservation Service Slide Hazard Area Studies; as unstable, unstable old slides, or unstable recent slides designated by the ~~1978~~ Dept. of Ecology Coastal Zone Atlas; and as quaternary slumps, earthflows, mudflows, lahars or landslides on maps published by the United States Geological Survey or Department of Natural Resources, Division of Geology and Earth Resources;
2. Any area with a combination of:
    a. Slopes 15 percent or steeper, and
    b. Impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominantly sand and gravel), and
    c. Springs or ground water seepage;
3. Any slope of 40 percent and with a vertical relief of 10 or more feet except areas composed of consolidated rock;
4. Any slope greater than 80 percent subject to rockfall during seismic events;
5. Any area which has shown movement during the past 10,000 years or which is underlain by mass wastage debris from that period of time;
6. Any area potentially unstable as a result of rapid stream incision, stream bank erosion (e.g., ravines) or undercutting by wave action (e.g., marine bluffs);
7. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.

"Locally unique features" means landforms and features that are important to the character of the city. These features or landforms usually contain more than one "critical area." Locally unique features in the region include ravines, marine bluffs, and beaches and associated coastal drift processes.

"Locally unique feature zones" means variable width planning areas defined as setbacks from the top of ravines or bluffs, or corresponding to the shoreline management zone for beaches and associated coastal-drift processes.

"Marine bluffs" means coastal features resulting from wave erosion undercutting uplands located adjacent to the shoreline creating vertical cliffs greater than twenty feet in height that are an important source of sediment for coastal-drift processes and the landforms created by these processes.

"Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology and logistics in light of overall project purposes, and having less impact to regulated wetlands. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded or managed in order to fulfill the basic purposes of the proposed activity.

"Priority habitats" means areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species richness; significant wildlife breeding habitat, seasonal ranges, or movement corridors; limited availability; and/or high vulnerability.

"Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and have at least five years of related work experience.

(a) A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.

(b) A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.

(c) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

(d) A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.~~a person with expertise appropriate to the relevant critical areas, and is determined by (1) professional credentials and/or certification, (2) any advanced degrees earned in the pertinent scientific discipline from an accredited university, (3) years of relevant experience, and (4) recognized leadership in the discipline of interest. No one factor is determinative in deciding whether a person is a qualified scientific expert.~~

"Ravines" means narrow gorges normally containing steep slopes, having little or no defined floodplain, and deeper than 10 vertical feet as measured from the centerline of the ravine to the top of the slope. Ravines may also contain flowing water or streams.

"Regulated wetlands" means areas that meet the definition of "wetlands" and that are not exempt from regulation.

"Repair or maintenance" means an activity that restores the character, scope, size and design of a serviceable area, structure or land use to its previously authorized and undamaged condition. Activities that change the character, size or scope of a project beyond the original design, and drain, dredge, fill, flood or otherwise alter additional regulated wetlands, are not included in this definition.

"Seismic hazard areas" means areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, ~~or~~ surface faulting, or tsunamis. Settlement and soil liquefaction~~These~~ conditions occur in areas underlain by cohesionless soils of low density usually in association with a shallow ground water table. One indicator of potential for future earthquake damage is a record of earthquake damage in the

past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking.

~~"Steep slope hazard areas" means any ground that rises at an inclination of 40 percent or more within a vertical elevation change of at least 10 feet (a vertical rise of 10 feet or more for every 25 feet of horizontal distance). A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.~~

"Stream ~~corridor zones~~buffers" means variable width planning areas defined as setbacks from the ordinary high water elevation of the stream or watercourse, or from the top of the bank or dike. Zones include both year-round and seasonal waterways, but vary in width depending on the rating of the stream. ~~If the stream or watercourse is contained within a ravine, the corridor zone will be established using the locally unique feature corridor zone.~~

"Unavoidable and necessary impacts" are impacts that remain after a person proposing to alter critical areas has demonstrated that no practicable alternative exists for the proposed project.

"~~Water~~ **Stream types"** include categories established ~~pursuant to WAC 222-16-020 and WAC 222-16-030,~~ as follows:

1. **"Type 1~~water~~"** means those streams inventoried as "shorelines of the state" in the City's adopted Shoreline Master Program. ~~waters, within their ordinary high water mark, which are inventoried as "shorelines of the state" under Chapter 90.58 RCW, but not including those waters' associated wetlands.~~
2. **"Type 2 ~~water~~"** means perennial or intermittent streams used by ~~salmonids~~ anadromous fish during any stage of life. ~~segments of natural waters which are not classified as Type 1 water and have a high use and are important from a water quality standpoint for domestic water supplies; public recreation; fish spawning, rearing, or migration or wildlife uses; or are highly significant to protect water quality. This classification shall be applied to segments of natural waters which:~~
   ~~a. Are diverted for domestic use by more than 100 residential or camping units or by a public accommodation facility licensed to serve more than 100 persons, where such diversion is determined by the Department of Natural Resources to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;~~
   ~~b. Are within a federal, state, local, or private campground having more than 30 camping units; provided, that the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use;~~
   ~~c. Are used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:~~
   ~~i. Stream segments having a defined channel 20 feet or greater in width between the ordinary high-water marks and having a gradient of less than four percent,~~
   ~~ii. Impoundments having a surface area of one acre or greater at seasonal low water.~~
3. **"Type 3 ~~water~~"** means perennial or intermittent streams with the potential for salmonid use, but does not currently support ~~salmonid~~ anadromous fish use because of

fish barriers or any other condition that substantially interferes with stream use by ~~salmonids~~ anadromous fish.

~~segments of natural waters which are not classified as Type 1 or 2 water and have a moderate to slight use and are moderately important from a water quality standpoint for domestic use; public recreation; fish spawning, rearing, or migration or wildlife uses; or have moderate value to protect water quality. This classification shall be applied to segments of natural waters which:~~

~~a. Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the Department of Natural Resources to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;~~

~~b. Are used by significant numbers of anadromous fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have significant anadromous fish use:~~

~~i. Stream segments having a defined channel five feet or greater in width between the ordinary high-water marks, having a gradient of less than 12 percent, and not upstream of a falls of more than 10 vertical feet,~~

~~ii. Impoundments having a surface area of less than one acre at seasonal low water and having an outlet to an anadromous fish stream;~~

~~c. Are used by significant numbers of resident game fish. Waters with the following characteristics are presumed to have significant resident game fish use:~~

~~i. Stream segments having a defined channel 10 feet or greater in width between the ordinary high-water marks, a summer low flow greater than 0.3 cubic feet per second, and a gradient of less than 12 percent,~~

~~ii. Impoundments having a surface area greater than 0.5 acres at seasonal low water;~~

~~d. Are highly significant for protection of downstream water quality. Tributaries which contribute greater than 20 percent of the flow to a Type 1 or 2 water are presumed to be significant for 1,500 feet from their confluence with the Type 1 or 2 water or until their drainage area is less than 50 percent of their drainage area at the point of confluence, whichever is less.~~

4. **"Type 4 ~~water~~"** means intermittent or perennial streams that are not Type 1, 2, or 3 that may contain fish other than ~~salmonids~~ anadromous fish.

segments of natural waters which are not classified as Type 1, 2 or 3. Their significance lies in their influence on water quality downstream in Type 1, 2 or 3 waters. These may be perennial or intermittent. This classification shall be applied to segments of natural water which are not classified as Type 1, 2, or 3, and for the purpose of protecting water quality downstream are classified as Type 4 water upstream until the channel becomes less than two feet in width between the ordinary high-water marks.

5. **"Type 5 ~~water~~"** means intermittent or perennial streams that are not Type 1, 2, 3, or 4.

~~all other waters, in natural watercourses, including streams with or without a well-defined channel, areas of perennial seepage, ponds, and natural sinks. Drainage ways having short periods of spring runoff are considered to be Type 5 waters. This classification shall be applied to all natural waters not classified as Type 1, 2, 3 or 4. (Ord. 631 § 1, 1992)~~

"Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands also include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

"Wetland buffer" or "wetland buffer zone" means an area that surrounds and protects a wetland from adverse impacts to the functions and values of a regulated wetland.

"Wetland categories" "classes of wetlands" or "wetland types" means descriptive classes of the wetlands taxonomic classification system of the current version of the Washington State Department of Ecology Wetlands Rating System for Western Washington.

"Wetland edge" means the line delineating the outer edge of a wetland. Wetlands will be delineated in accordance with the procedure outlined in WAC 173-22-035.

"Wetland functions" means the beneficial roles served by wetlands, including, but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; historical, archaeological and aesthetic value protection; and recreation. These beneficial roles are not listed in order of priority.

18.80.040 Applicability.

This chapter establishes regulations for the designation and protection of properties ~~which are~~ with ~~environmentally sensitive (~~critical areas~~)~~ – and critical area buffers as indicated under D below. Properties listed, identified, classified or rated as ~~environmentally sensitive~~ critical areas are those which are or may become designated ~~environmentally sensitive (~~critical areas~~)~~ by the city's comprehensive plan, development regulations, or by separate studies which indicate that all or portions of a particular area or specific site are ~~environmentally sensitive~~ critical areas. A site-specific analysis which indicates that any element regulated by this chapter is present will result in that portion of ~~a~~ the property being classified as a ~~environmentally sensitive~~ critical area.

A. All development proposals on sites which are identified as ~~environmentally sensitive~~ critical areas shall comply with the requirements and provisions of this chapter. Responsibility for administration and enforcement of the provisions of this chapter shall rest with the ~~planning director~~Department of Community Development director or the director's designee.

B. For the purposes of this chapter, development proposals include proposals which require ~~any of the following: building permit, clearing and grading permit, shoreline substantial development permit, shoreline conditional use permit, shoreline variance, shoreline environmental redesignation, conditional use permit, zoning variance, zone reclassification, planned unit~~

~~development, subdivision, short subdivision, or any other~~ land use approvals required by City ordinance~~s of the city~~, as amended, or the Revised Code of Washington.

C. When any other City provision ~~of any other city ordinance~~ conflicts with this chapter, that provision which provides the greatest protection to ~~environmentally sensitive~~critical areas shall apply ~~unless specifically provided otherwise in this chapter~~.

D. This chapter applies to all lots or parcels ~~on which~~ that ~~environmentally sensitive~~areas are ~~located~~ contain or are adjacent to critical areas ~~within the jurisdiction of the city~~. ~~For specific environmentally sensitive features areas (wetlands, stream corridors, ravines, marine bluffs, beaches),~~ Ce~~r~~itical area~~s~~ ~~zones~~ shall be defined and designated ~~as set forth below~~ to assure that the properties subject to review under this chapter encompass all areas necessary to maintain the natural hydraulic and habitat functions of the critical area. The approximate distribution and extent of ~~environmentally sensitive~~critical areas in the city and its urban growth area are displayed on ~~the following series of~~ maps on file with the city ~~planning~~ D~~d~~epartment of Community Development:

1. ~~NWI Wetland, Hydric Soils and Composite Maps, as promulgated pursuant to the city's Wetlands Protection Ordinance, Chapter 18.80 SMC.~~

~~2. Environmentally sensitive areas, also known as~~ C~~c~~ritical areas~~,~~ composite maps~~, which~~ shall be prepared and revised on an ongoing basis ~~by the planning director or other responsible designee~~. The Clallam County Critical Areas Map may also be used as a guide in determining critical areas. Wetlands identified on the U.S. Fish and Wildlife Service National Wetlands Inventory, and hydric soils and "wet spots" identified by the USDA Soils Conservation Service Natural Resource Conservation Service Soil Survey of Clallam County Area, Washington may also be used.

2. These maps are to be used as a guide to the general location and extent of ~~environmentally sensitive~~critical areas~~. The maps shall be used~~ and to alert the public and city officials of the potential presence of ~~environmentally sensitive~~critical areas on-site or off-site of a development proposal. Given the generalized nature of these maps and recognizing that ~~environmentally sensitive~~critical areas are a dynamic environmental process, the actual presence and location of ~~environmentally sensitive~~critical areas, as determined by qualified professional~~s and technical scientists~~, shall be established and protected in accordance with all the provisions of this chapter, which shall govern the treatment of proposed development sites.

3. In the event that any of the ~~environmentally sensitive~~critical areas shown on the maps conflict with the criteria set forth in this chapter, the criteria shall control.

E. The ~~planning~~ Department of Community Development director, as assisted by other city officials, has final responsibility for the accuracy of the submitted information. Once classification and location~~al~~ information have been verified for a particular lot or parcel, the ~~planning~~ director shall require that the owner/applicant~~: convey this information on parcel legal documents~~

1. File a notice on title with the Clallam County Auditor pursuant to SMC 18.80.090; and

2. Place a "critical areas easement" on the face of a final subdivision, minor subdivision binding site plan, or boundary line adjustment.~~filed with the city and county, and provide notice to property owners with parcels directly adjoining the identified critical features, so that the "alerting" purpose of SMC 18.80.020(H) can be accomplished and the "continuance of classification" protection required under SMC 18.76.060 safeguarded~~. (Ord. 2002-027 § 4; Ord. 631 § 1, 1992)

18.80.045 Critical Area Review

A. The City shall perform a critical area review for an development proposal permit application or other request to proceed with an alteration on a site that includes a critical area or is within an identified critical area buffer or building setback area. Any required studies shall be conducted in conformance with 18.80.060(C).

B. As part of the critical area review, the City shall:

1. Determine whether any critical area exists on the property and confirm its nature and type;

2. Determine whether a critical area special study is required;

3. Evaluate the critical area special study, if one is required;

4. Determine whether the proposal is consistent with this Chapter;

5. Determine whether any proposed alteration to the critical area is necessary; and

6. Determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives, and requirements of this Chapter.

18.80.050 Permitted uses and development restrictions.

A. Permitted Uses. Uses permitted on properties classified as ~~environmentally sensitive~~critical areas shall be the same as those permitted in the underlying zone. Each use shall be evaluated in accordance with the review process required for the proposed use in the underlying zone in conjunction with the requirements of this chapter and state and federal regulations.

~~Nothing in this chapter is intended to preclude reasonable use of property. If any applicant feels that the requirements of this chapter as applied to a specific lot or parcel of land do not permit a reasonable use of property, the applicant may request that the planning director make a determination as to what constitutes reasonable use of such property. Any decision of the planning director in making such a determination shall be subject to the appeal provisions set forth in Chapter 18.72 SMC as amended, and the burden of proof in such an appeal shall be upon the appellant to prove that the determination of reasonable use made by the planning director is incorrect.~~

B. Development Restrictions.

1. The following ~~environmentally sensitive~~critical areas and their buffers shall remain undisturbed pursuant to SMC 18.80.070, except as otherwise provided in SMC 18.80.080:

a. ~~Significant and important w~~Wetlands; ~~and their buffers, pursuant to the regulations presented in Chapter 18.80.070 SMC;~~

b. Surface streams; ~~and their buffers, pursuant to SMC 18.80.070;~~

c. Ravines and, marine bluffs; ~~and~~ ~~and their buffers, pursuant to SMC 18.80.070;~~

d. Beaches and associated coastal drift processes~~, pursuant to SMC 18.80.070~~ and;

e. Fish and Wildlife Habitat Conservation Areas.

2. All other ~~environmentally sensitive~~critical areas identified in SMC 18.80.030~~(B)~~ are developable pursuant to the provisions of SMC 18.80.070. The applicant shall ~~clearly and convincingly demonstrate to the satisfaction of the planning director~~provide supporting documentation that the proposal incorporates measures pursuant to this chapter ~~which~~ that adequately protect the public health, safety and welfare. ~~(Ord. 631 § 1, 1992)~~

3. Special ~~Use Permit~~ Conditions.

a. As a condition of any land use permit, building permit, grading permit, clearing permit and subdivision or short plat ~~permit~~ issued pursuant to the Sequim Municipal Code ~~this chapter~~, the ~~permit holder~~ property owner and/or applicant shall be required to create a separate critical area tract or tracts containing the areas determined to be critical area and/or critical area buffer.

b. The common boundary between a separate critical area tract and the adjacent land ~~should~~ shall be permanently identified. This identification shall include permanent wood or metal signs on treated wood or metal posts indicating that property owners, homeowner's associations, or other party is responsible for the care and maintenance of the critical areas tract(s).

c. Sign locations and size specifications shall be approved by the Department of Community Development director or authorized designee.

d. The Department of Community Development director or authorized designee shall require permanent fencing of the critical areas ~~when there is a substantial likelihood of the presence or introduction of domestic grazing animals~~ within the development proposal.

e. The Department of Community Development director or authorized designee may attach such additional conditions to the ~~granting of a special use~~ approval of any permit or application as deemed necessary to assure the preservation and protection of affected critical areas and to assure compliance with the purposes and requirements of this chapter.

f. This subsection shall not apply to any single-family lot -that is a lot of record or any single-family lot within any subdivision or short plat that has received preliminary approval prior to the adoption of this subsection. This subsection shall not abrogate any requirements for critical area tracts already required for preliminary subdivisions or short plats approved prior to the adoption of this subsection.

18.80.055 Exempt Activities

Exempt Activities. The following uses shall be exempt if they are not prohibited by any other ordinance or law and are conducted using best management practices:

A. Normal repair and routine maintenance and operation of residences, landscaping, utilities, roads, trails, irrigation and drainage ditches, and fish ponds which were lawfully constructed, approved, or established prior to the effective date of this chapter if no expansion results.

B. Operation and maintenance of all electric facilities, lines, equipment or appurtenances, water and sewer lines; natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances, except for power, water, and sewer substations and pump sites or new utilities within designated frequently flooded areas. For the purposes of this chapter, operation and maintenance shall include those usual acts necessary for the continued use of existing services in their establish locations. Replacement, expansion, relocation or placement of new utility service lines shall be subject to the standards of this chapter, as applicable.

C. Conservation or preservation of soil, water vegetation, fish, shellfish and other wildlife that does not involve changing the structure or functions of the existing wetland.

D. Low-intensity, outdoor recreational activities having minimal adverse impacts, including but not limited to wildlife watching and nonpermanent blinds, hiking, boating, swimming, canoeing, bicycling, pervious trails less than five feet in width, and sport fishing or hunting.
E. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and that does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions or water sources.
F. Existing and ongoing agricultural activities, including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations.
G. Education, scientific research and activities, and use of nature trails.
H. Navigation aids and boundary markers.
I. Boat-mooring buoys.
J. Site investigative work necessary for land use application submittals, such as surveys, soil logs and other related activities. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.
K. Enhancement of a critical area or buffer by removing non-native, invasive plant species. Only hand removal shall be allowed under this exemption unless the necessary permits have been obtained from the regulatory agencies specifically allowing biological or chemical treatments. All removed plant material shall be taken from the site and disposed of appropriately. Plants that appear on the State Noxious Weed Board list of noxious species must be handled according to a control plan appropriate for that plant species. Re-vegetation with native species is allowed at natural densities if performed in conjunction with removal of invasive species.

18.80.060 Submittal requirements and support information required.

A. **Submittal Requirements**. Applications for land uses or developments proposed within critical areas ~~listed, identified, classified, rated or otherwise determined to be environmentally sensitive or which have been so determined by the planning director based upon a site-specific analysis or such other information supplied which supports the finding that a site or area is likely to contain environmentally sensitivecharacteristics,~~ shall be filed with all the information requested on the application forms available from the ~~planning d~~Department of Community Development. ~~The planning director may waive specific submittal requirements determined to be unnecessary for review of a specific application type.~~ All developments proposed on lots or parcels which may contain or adjoin ~~environmentally sensitive~~critical areas, as determined by the city, shall be evaluated by the applicant to provide the information necessary for the ~~planning d~~Department of Community Development to determine if and to what extent the site contains ~~environmentally sensitive~~critical area characteristics. The ~~planning~~ Department of Community Development director shall make the determination to classify a site or portion of a site as ~~environmentally sensitive~~a critical area pursuant to the procedures set forth in SMC 18.80.045.0~~(E).~~ For applications which are subject to review pursuant to SEPA, the appeal of a

determination that a site is a ~~environmentally sensitive~~critical area shall be made pursuant to the SEPA appeals procedures as set forth in SMC Title 16.

B. **Supporting Information Required**.

1. All land uses and developments proposed on or adjacent to lots or parcels listed, identified, inventoried, classified or rated as ~~environmentally sensitive~~critical areas shall include supporting studies, prepared to describe the environmental limitations of the site. No construction activity, including clearing or grading, shall be permitted until the information required by this chapter is reviewed and approved by the city as adequate. Special environmental studies shall include a comprehensive site inventory and analysis, a discussion of the potential impacts of the proposed development, and specific measures designed to mitigate any potential adverse environmental impacts of the applicant's proposal, both onsite and off-site, as follows:

a. A description of how the proposed development will or will not impact each of the following on the subject property and adjoining properties:

i. Erosion and landslide hazard,

ii. Seismic hazards,

iii. Drainage, surface and subsurface hydrology and water quality,

iv. Flood-prone areas,

v. Existing vegetation as it relates to steep slopes, soil stability and natural habitat ~~value (for wetlands, refer to Chapter 18.70 SMC)~~,

vi. Locally unique landforms: ravines, marine bluffs, beaches and associated coastal-drift processes,

vii. Slopes greater than 40 percent;

viii. wetlands; and

ix. critical aquifer recharge areas pursuant to 18.80.100.

b. Recommended methods for mitigating identified impacts and a description of how these mitigating measures may impact adjacent properties;

c. Any additional information determined to be relevant by the city or by the professional consultant who prepared the study.

2. Such studies shall be prepared ~~with assistance~~ by qualified professionals. ~~experts in the area of concern, which at a minimum shall include the following types of experts:~~

~~a. Flood hazard areas – professional civil engineer licensed by the state of Washington;~~

~~b. Landslide hazard areas, seismic hazard areas, and erosion hazard areas – geologist and/or geotechnical engineer;~~

~~c. Steep slopes – geologist or geotechnical engineer;~~

~~d. Wetlands – biologist with wetlands ecology expertise;~~

~~e. Streams, rivers, riparian areas, drainage corridor, ravine – geologist or geotechnical engineer;~~

~~f. Marine bluffs, beaches – geologist or geotechnical engineer, oceanographer;~~

~~g. Fish and wildlife habitats – biologist.~~

C. **City Review**.

1. An applicant for a development proposal that includes or is within an identified critical area or critical area buffer shall enter into a three (3) party agreement, as approved by the City. The applicant shall pay the costs for the City to hire the appropriate consultant(s) to provide a critical area special study to adequately evaluate the proposal and all probable

impacts, unless studies have already been prepared by the applicant's consultant. If the applicant has already prepared studies, the applicant shall pay for the costs of a peer review of all studies submitted. The applicant shall pay for any additional studies that may be required in the peer review. The selection of the consultant(s) hired for the study or peer review by the City shall be at the sole discretion of the City. ~~The city may in some cases retain consultants at the applicant's expense to assist the review of studies outside the range of staff expertise.~~

2. All ~~environmentally sensitive~~critical area studies shall be prepared under the ~~supervision~~ direction of the city. The ~~planning~~ Department of Community Development director will make the final determination on the adequacy of these studies.

3. Project proposals with impacts to ~~wetlands~~ critical areas must be submitted to the ~~Dept. of Ecology~~ appropriate agencies for review and comment. ~~Project proposals with impacts only to wetland buffers need not be submitted to Ecology.~~

4. The City's review of critical area permit applications shall not be construed to take the place of any other additional local, state, or federal permits or permit requirements. (Ord. 631 § 1, 1992)

~~D. Property Unrelated to Natural Functions. An applicant may hire a qualified professional to determine if a particular property is wholly unrelated to the natural functions of the critical area.~~

18.80.070 Development standards.

A. **Streams and Stream ~~Corridors~~Buffers**. Any development or construction adjacent to streams shall preserve an undisturbed ~~corridor~~ buffer which is wide enough to maintain the natural hydraulic and habitat functions of that stream as it relates to an urban environment. The dimensions of stream ~~corridor zones~~buffers~~, in which all properties are potentially subject to the requirements of this chapter,~~ are listed in subsection (A)(1) of this section. ~~Should it be determined that particular properties within this zone are unrelated to the natural functions of the stream, the planning director may waive specific submittal requirements for these properties or exclude them from the requirements of this chapter.~~ If streams ~~or watercourses~~ are located within ravines, as defined in SMC 18.80.030~~(L)~~, ~~corridors~~ buffers will be ~~delineated~~ established according to the criteria set forth in subsection B of this section.

1. ~~Stream Corridor Zones.~~

~~a. This subsection defines zone dimensions for different classes of streams and their tributaries as rated by the Washington State Department of Natural Resources. All properties falling within this zone are subject to review under this chapter unless excluded by the planning director. Dimensions are measured from the seasonal high-water elevation of the stream or watercourse as follows:~~

~~Type 1 250 feet;~~
~~Type 2 250 feet;~~
~~Type 3 150 feet;~~
~~Type 4 100 feet;~~
~~Type 5 100 feet.~~

~~b. Should the stream be located within a ravine, the greater dimension of either the stream corridor zone or the ravine zone will be used to define properties subject to the requirements of this chapter.~~

~~2.~~ Stream ~~Corridor~~ Buffers.

a. The following buffers of undisturbed native vegetation shall be provided for different classes of streams and their tributaries ~~as rated by the Washington State Department of Natural Resources~~. Dimensions are measured from the ordinary high-water elevation of the stream or watercourse, or from the top of the bank or dike:

Type 1	~~100~~ 150 feet;
Type 2	100 feet;
Type 3	75 feet;
Type 4	50 feet;
Type 5	25 feet.

b. Closed stream segments shall have no buffers.

c. Where the FEMA floodplain is wider than these buffers, the width of the floodplain shall be considered to be the buffer width.

23. Stream ~~corridor widths, and their associated~~ buffers~~,~~ shall be increased to include streamside wetlands ~~which~~ that provide overflow storage for storm waters, feed water back to the stream during low flows or provide shelter and food for fish.

34. Additional Buffers. The ~~planning~~ Department of Community Development director may require ~~either~~ additional native vegetation or increased buffer sizes when environmental information indicates the necessity for additional vegetation or greater buffers in order to achieve the purposes of this chapter. In cases where additional buffers are not feasible, the ~~planning~~ Department of Community Development director may require the applicant to undertake alternative on-site or off-site mitigation measures, including but not limited to a financial contribution to projects or programs which seek to improve environmental quality within the same or adjacent watershed.

4. Stream relocation shall be allowed only when the relocation:

a. is part of an approved mitigation or rehabilitation plan;

b. will result in equal or better habitat and water quality;

c. will not diminish the flow capacity of the stream; and

d. will result in equal or better hydrologic continuity.

Any relocation must obtain prior approval from the Washington Department of Fish and Wildlife. Relocation of Type 1 streams is prohibited.

B. **Ravines, Marine Bluffs and Beaches and Associated Coastal Drift Processes**. All properties falling within the buffer zones identified in the following subsection are subject to the requirements of this chapter. ~~Should it be determined that particular properties within these zones are unrelated to the natural functions of the stream, bluff, or beach, the planning director may waive specific submittal requirements for these properties or exclude them from the requirement of this chapter~~.

1. ~~Locally Unique Feature Corridor Zones. The following zones, as measured from the top of ravines, the top and toe of marine bluffs, and beaches, define areas encompassing properties that shall be subject to the requirements of the chapter, unless excluded by the planning director:~~

~~a. Ravines, 200 feet;~~

~~b. Marine bluffs, 200 feet;~~

~~c. Beaches and associated coastal drift processes, Shoreline Management Zone. Should locally unique feature corridor zones also overlay stream corridor zones, the criteria of this section will be used.~~

~~2.~~ Buffers. The following buffers of undisturbed vegetation shall be established from the top of ravines and the top and toe of marine bluffs and ravine bluffs:

a. Ravines, 50 feet;

b. Marine bluffs, ~~50 feet~~ as set forth in the City's adopted Shoreline Master Program,

c. Beaches and associated coastal drift processes, as set forth in the City's adopted Shoreline Master Program ~~25 feet~~.

~~3. Undisturbed zones adjoining both marine bluffs and beaches shall be sufficient to assure that natural coastal-drift processes will remain unimpaired. Therefore, buffers may be reduced or increased, as outlined in subsections (B)(4) and (B)(5) of this section.~~

2.~~4.~~ Buffer Reduction. Undisturbed zones adjoining both marine bluffs and beaches shall be sufficient to assure that natural coastal-drift processes will remain unimpaired.

a. Buffers for "feeder" or eroding bluffs shall not be reduced.

b. The buffer for non-eroding bluffs may be reduced when expert verification and environmental information demonstrate ~~demonstrate to the satisfaction of the planning director~~ that the proposed construction method will:

i. Not adversely impact the stability of ravine sidewalls and bluffs;

ii. Not increase erosion and mass movement potential of ravine sidewalls and bluffs;

iii. Use construction techniques which minimize disruption of the existing topography and vegetation; and

iv. Include measures to overcome any geological, soils and hydrological constraints of the site;

c~~v~~. ~~In no event may a~~ B~~b~~uffers shall not be reduced to less than 25 feet from the top of a ravine, or the top or toe of a non-eroding bluff.

3~~5~~. Additional Buffers. The ~~planning~~ Department of Community Development director may require increased buffers if environmental studies indicate such increases are necessary to mitigate landslide, seismic and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare.

4~~6~~. Viewshed Enhancement. In ravine and marine bluff buffers~~, the planning director may approve alterations in vegetation coverage for the purposes of~~ tree removal for viewshed enhancement is allowed~~,~~ so long as ~~such alterations~~tree removal does not exceed 50%, and:

a. Will not increase geological hazards such as erosion potential, landslide potential or seismic hazard potential; or

b. Will not adversely affect significant wildlife habitat areas; and

c. Are based upon a review and recommendation by a certified arborist.

C. **Geological Hazard (Erosion, Landslide, Seismic) Areas**. Areas containing or adjacent to geological hazard areas shall be altered only when the ~~planning~~ Department of Community Development director concludes, based on environmental information, the following:

1. ~~For l~~Landslide hazard areas:

a. There will be no increase in surface water discharge or sedimentation to adjacent properties,

b. There will be no decrease in slope stability on adjacent properties, and

c. Either:

i. There is no hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a quantitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties,

ii. The landslide hazard area can be modified or the development proposal can be designed so that the landslide hazard is eliminated or mitigated so that the site is as safe as a site without a landslide hazard; or

iii. The alteration is so minor as not to pose a threat;

2. ~~For e~~Erosion hazard areas:

a. Areas containing erosion hazard areas shall have land clearing, grading or filling limited to the period between April 1st and October 1st,

b. Vegetation ~~on steep slopes~~ shall be preserved or replaced;

3. ~~For s~~Seismic hazard areas:

a. Areas containing or adjacent to seismic hazard areas shall be altered only when the ~~planning~~ Department of Community Development director concludes, based on environmental information, the following:

i. There is no actual hazard based on a lack of seismic activity in the past in the area of the development proposal, and a quantitative analysis of potential for seismic activity indicates no significant risk to the development proposal; or

ii. The development proposal can be designed so that it will minimize any risk of harm from seismic activity to public health, safety or welfare on or off the site.

b. Construction on ~~artificial~~ fills allowed through a development permit ~~will~~ shall be certified by a ~~geotechnical/civil engineer~~qualified professional to be ~~as~~ safe~~ from earthquake damage as a similar development not located on artificial fill~~. This requirement may be waived by the Public Works Director for actions involving minor changes, alterations, or additions to developed properties, provided that such activities do not jeopardize public health, safety or welfare on or off the site~~, as determined by a qualified professional~~;

4. ~~For g~~Geological hazard area buffers: ~~In the event that~~ If it is determined that a geological hazard area, particularly landslide hazard and erosion hazard areas or steep slopes, cannot be safely developed and must remain as permanent open space. The geological hazard area ~~, such as steeply sloping terrain,~~ shall have a ~~the following~~ buffer of ~~will be established:~~ 50 feet from the top and toe of the designated area. This buffer may be reduced (to not less than 25 feet) or enlarged based on geotechnical review, which assures any such variation provides or is necessary to provide adequate protection of any structures on site.

D. ~~Significant~~ **Fish and Wildlife Habitat Conservation Areas**. To protect the habitat of animal species which are considered to be endangered or threatened species and thereby maintain and increase their populations, ~~significant~~ fish and wildlife habitat conservation areas shall be subject to the following:

1. When a development proposal contains a priority habitat for endangered or threatened species, the applicant shall submit a habitat management plan. The need for a habitat management plan should be determined during State Environmental Policy Act (SEPA) review of the proposal. The habitat management plan should identify how the impacts

from the proposed project will be mitigated. Possible mitigation measures should include, but are not limited to:

a. Establishment of buffer zones,

b. Preservation of critically important plants and trees within the buffer,

c. Limitation of access to habitat area,

d. Scheduling construction activities to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities,

e. Using best available technology to avoid or reduce impacts,

f. Using drainage and erosion control measures to prevent siltation of aquatic areas, and

g. Possibly reducing the size, scope, configuration or density of the project;

2. Buffer. To retain adequate natural habitat for endangered or threatened species, buffers shall be established on a case-by-case basis as described in a habitat management plan;

3. Uses and activities allowed within a significant wildlife habitat area as identified by a habitat management plan shall be limited to low-intensity land uses which will not adversely affect or degrade the habitat and which will not be a threat to the critical ecological processes such as feeding, breeding, nesting and resting.

4. Bald eagle habitat shall be protected pursuant to the Washington State bald eagle protection rules (WAC 232-12-292). Whenever activities are proposed within 800 feet of a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. The director shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Washington Department of Fish and Wildlife.

E. **Frequently Flooded Areas**. Development in frequently flooded areas which are not subject to the standards of other ~~environmentally sensitive~~critical areas ~~, including wetlands,~~ will be directed by Chapter ~~1~~8.36~~70~~ SMC, Flood Damage Prevention.

F. **Wetlands**.

1. The following wetlands are exempt from regulation:

a. All isolated wetlands less than 1,000 square feet that are not part of a wetland mosaic;

b. Category III wetlands less than 2,500 square feet;

c. Category IV wetlands less than 4,356 square feet;

d. Category IV wetlands greater than 4,356 square feet and less than 10,000 square feet with mitigation; and

e. Wetlands created directly as a result of poorly maintained storm drainage systems that would not have been created if the drainage system had been properly maintained.

f. The City reserves the right to require mitigation, after public notice, for small wetland impacts, consistent with ratios established in the Table in Section 18.80.070(F)(8) should a mitigation bank or in-lieu fee program become available in the appropriate watershed.

2. Determination of Regulatory Wetland Boundary.

a. The exact location of the wetland boundary shall be determined through the performance of a field investigation applying the wetland definition provided in this Chapter. Qualified professionals shall perform wetland delineations, which shall be delineated in accordance with the procedure outlined in WAC 173-22-

035 pursuant to RCW 36.70A.175 and 90.58.380. An applicant for a wetland permit is required to show the location of the wetland boundary on a scaled drawing as a part of the permit application.

b. The City retains the right to obtain its own delineations through a qualified professional pursuant to SMC 18.80.060. If the City's delineation differs from the applicant's delineation, the City's delineation shall control and shall be considered a final decision.

3. Wetland rating categories shall be applied to the regulated wetland:

a. as it exists on the date of adoption of the rating system by the City,

b. as the regulated wetland may naturally change thereafter, or

c. as the regulated wetland may change in accordance with permitted activities.

d. Wetland rating categories shall not be altered to recognize illegal modifications made by the applicant or with the applicant's knowledge.

4. Regulated Activities. A permit shall be obtained from the City prior to undertaking the following activities in a regulated wetland or its buffer:

a. The removal, clearing, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter or material of any kind;

b. dumping, discharging or filling with any material;

c. draining, flooding or disturbing of the water level or water table;

d. pile driving;

e. The placing of obstructions;

f. The construction, reconstruction, demolition, or expansion of any structure;

g. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning or planting of vegetation that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under RCW 76.09 and its rules, unless those activities are Class IV activities regulated by the City;

h. Stormwater management facilities in Category III or IV wetlands having no other reasonable alternative on-site location if the facilities are located in the outer 25% of the buffer; or

i. Development in Category III or IV wetlands having no feasible alternative location if mitigation sequencing is applied; or

j. Activities that result in the introduction of pollutants or a significant change of water temperature, physical or chemical characteristics of wetlands water sources, or in the quantity, timing, or duration of the water entering the wetland.

When such permit applications are submitted, the City shall submit applications to the Department of Ecology for comment, pursuant to SMC 18.80.060(C)(3). Ecology should submit its comments or should request an extension of the review period within 30 days of submittal. Extensions may be up to 30 days in length. When submitted, no permit shall be issued under this subsection prior to receipt of such comments or the expiration of the time period or any extensions and receipt of any other necessary permits.

5. Buffers. Wetland buffers shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer zone shall be determined according to

wetland category, habitat score, and the intensity of the proposed land use. For the purposes of this section, "low impact land use" means land uses with low levels of human disturbance or low wetland habitat impacts, including but not limited to, passive recreation, open space, educational field trips, small gardens, or low impact stormwater retention facilities. A maximum net density of four dwelling units per-acre is defined as low intensity. "Net density" means the density calculation after the land set aside for roads and wetlands (but not their buffers) has been removed from the total land associated with the proposed development. "High impact land use" means land uses associated with moderate or high levels of human or structural disturbance including but not limited to R-II conditional or special uses, R-III zoning and above, multi-family residential, active recreation, commercial and industrial land uses.

Wetland Rating	**Land Use Impact**	**Buffer**
Cat I – Habitat score 20 or more, or estuarine or coastal lagoon	Low High	150 ft. 200 ft.
Cat I – Habitat score 19 or less	Low High	125 ft. 200 ft.
Cat II – Habitat score 20 or more, or estuarine or coastal lagoon	Low High	~~85~~ 100ft. 150 ft.
Cat II – Habitat score 19 or less	Low High	65 ft. 100 ft.
Cat III – Habitat score 20 or more	Low High	75 ft. 125 ft.
Cat III – Habitat score 19 or less	Low High	40 ft. 75 ft.
Cat IV	All	25 ft.

The following measures are required, as applicable, to receive the buffer widths listed above.

- Outdoor lighting from the development shall be designed and installed to prevent direct casting of light into adjacent wetland areas. Final design shall be reviewed and approved by the Dept. Community Development prior to permit issuance.
- Activity that generates noise shall be located away from wetlands. If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source.
- The applicant shall prepare a restrictive covenant, to be placed upon the deed for the property that prohibits use of pesticides within one hundred fifty (150) feet of the delineated on-site wetland area. Proof of the recorded covenant shall be provided to the City prior to permit issuance.

• Surface water management shall be consistent with low impact development (LID) practices as set forth in the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington" and the 2005 Puget Sound Action Team and Washington State University Pierce City Extension document entitled "Low Impact Development: Technical Guidance Manual for Puget Sound." Final design shall be reviewed and approved by the Public Works Dept. prior to permit issuance.
• Permanent fencing on the boundary of a wetland buffer to protect its functions and values. Fencing design shall not interfere with fish and wildlife migration and shall minimize impacts to the wetland and its associated habitat.
• The applicant shall utilize dust control best management practices (BMP) during development activities. Such practices shall be consistent with "BMP C140" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington."
• Surface water from areas adjacent to on-site delineated wetland areas shall be channelized and treated prior to discharge into wetland buffer areas. Surface water treatment shall be consistent with "BMP T511" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington." Final design shall be reviewed and approved by the City Public Works Department prior to permit issuance.
• All treated surface water proposed for discharge into any on-site delineated wetland area shall be conveyed in a manner consistent with those practices set forth in "Guide Sheet 2: Wetland Protection Guidelines" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington." Final design shall be reviewed and approved by the City Public Works Department prior to permit issuance.
• Existing on-site drainage system facilities shall be reviewed by a Washington State-licensed engineer to determine their ability to accommodate the increased volume of surface water created by the new development. The facilities shall be modified as necessary with facility design consistent with the direction provided in "Volume III" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington." Final design shall be reviewed and approved by the City Public Works Department prior to permit issuance.
• Surface water from impervious surfaces and lawns located adjacent to on-site delineated wetland areas shall be channelized and treated prior to discharge into wetland buffer areas. Surface water treatment shall be consistent with those practices contained in "Volume V" of the 2005 State Department of Ecology document entitled "Stormwater Management Manual for Western Washington." Final design shall be reviewed and approved by the City Public Works Department prior to permit issuance.
• Apply integrated pest management.
• The delineated on-site wetland area shall be placed in a separate tract as prescribed in Section 18.80.090.

6. A building setback line of 15 feet is required from the edge of any wetland buffer. Minor structural intrusions into the area of the building setback may be allowed if the Department of Community Development director or authorized designee determines, supported by objective written evidence, that such intrusions will not negatively impact the wetland. If the wetland buffer is already heavily impacted, building setbacks may be reduced in exchange for buffer enhancement – see SMC 18.80.080.

7. ~~Minimizing impacts to wetlands shall include but is not limited to:~~

~~Limiting the degree or magnitude of the regulated activity;~~

~~Limiting the implementation of the regulated activity;~~

~~Using appropriate and best available technology;~~

~~Taking affirmative steps to avoid or reduce impacts from noise, artificial light, stormwater runoff, human disturbances, etc.;~~

~~Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;~~

~~Involving resource agencies early in site planning; and~~

~~Providing protective measures, such as siltation curtains, hay bales, and other siltation prevention measures; and scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities.~~

8. Wetlands Restoration and Creation.

a. Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses.

b. Where feasible, restored or created wetlands shall be a higher category than the altered wetland.

c. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self-sustaining, and projected success. Wetland functions and values shall be calculated using the best professional judgment of a qualified wetland ecologist using the best available techniques. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss.

d. Acreage Replacement Ratio. The following ratios apply to wetland creation or restoration which is in-kind, on-site, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered. Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment.

~~i. Category I: 6 to :1~~

~~ii. Category II: 3 to :1~~

~~iii. Category III: 2:1~~

~~iv. Category IV: 1.5:1~~

~~For wetland enhancement projects used for mitigation, ratios shall be double those indicated above.~~

Category and	**Creation or**	**Rehabilitation**	**Enhancement**	**Preservation**

Type of Wetland	Re-establishment			
Category I: Coastal Lagoon, Natural Heritage site	Not considered possible	6:1	Case by case	10:1
Category I: Mature Forested	6:1	12:1	24:1	24:1
Category I: Estuarine	Case by case	6:1 of estuarine wetland	Case by case	Case by case
Category I: Based on functions	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

G. **Standard Buffer Width Averaging. Buffers may be modified by averaging buffer widths.** This section shall not apply to geohazard areas. Averaging shall not be allowed in conjunction with any other buffer reduction provisions. Averaging to improve critical area protection may be permitted when all of the following conditions are met:

1. There are no feasible alternatives to the site design that could be accomplished without buffer averaging;
2. The buffer is increased adjacent to the higher-functioning or more sensitive areas and decreased adjacent to the lower-functioning or less sensitive portion;
3. The total area of the buffer after averaging is equal to the area required without averaging; and
4. The buffer at its narrowest point is never less than 3/4 of the required width.

H. ~~Limited~~ **Density Credit or Floor Area On-Site Transfer Calculation**. The calculation of potential dwelling units in residential development proposals and allowable floor area in nonresidential development proposals shall be determined by the ratio of developable area to undisturbable ~~environmentally sensitive~~critical areas and buffers of the development site~~, except as otherwise provided for wetlands in the city's Wetlands Protection Ordinance, Chapter 18.70 SMC~~. ~~The following formula for d~~Density credits and floor area calculations ~~is~~ are designed to provide compensation for the preservation of ~~environmentally sensitive~~critical areas and their buffers, flexibility in design, and consistent treatment of different types of development proposals.~~:~~ Density credit or floor area shall be allowed for ~~steep slopes,~~ landslide and erosion hazard areas, and required buffers for any critical area ~~as set out below~~:

Percentage of Site as ~~Sensitive~~ Critical Area	~~Density of~~ Floor Area Added to Remaining Developable Site	Density Credit
1 – 10	.30	100%
11 – 20	.27	90%
21 – 30	.24	80%
31 – 40	.21	70%
41 – 50	.18	60%
51 – 60	.15	50%
61 – 70	.12	40%
71 – 80	.09	30%
81 – 90	.06	20%
91 – 99	.03	10%

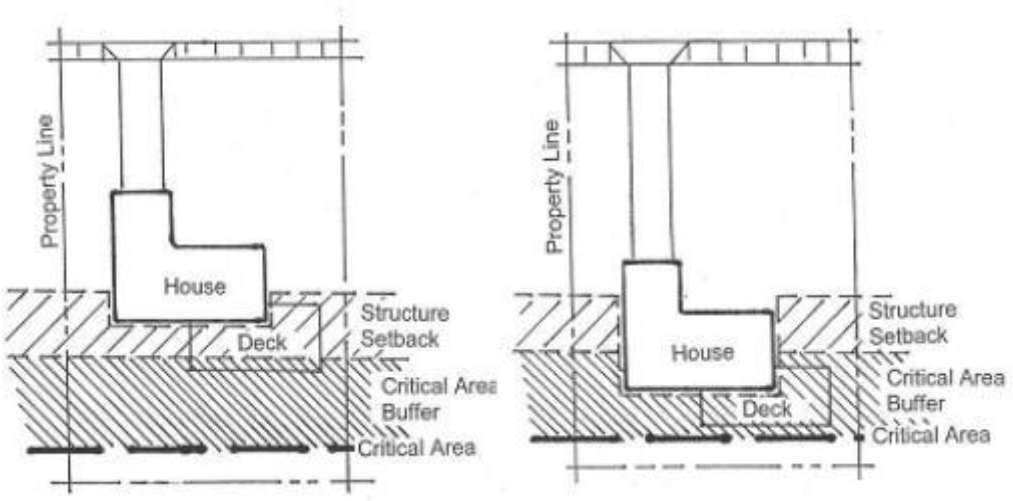
~~(Ord. 631 § 1, 1992)~~

Full density credit shall be allowed for erosion, seismic, and flood hazard areas. For ~~steep slopes with~~ landslide, erosion, and seismic hazards, the most restrictive regulations shall apply. The resulting density determination is rounded down to the nearest whole number.

For example: A 4.5 acre site in the R-II zone would have a potential gross density of 22 units (based on five units per acre). If the developable area of the site is reduced to 2.25 acres (a 50% reduction based on landslide hazard areas and critical area buffers), the net density is 11 units for the site. Appling the density credit of 60% from the above table allows 17 units on the site (11 x 160% = 17.6 or 17 units).

18.80.075 Buffer and Setback on Sites with Existing Primary Structure(s)

Where a primary structure legally established on a site prior to (date) encroaches into the critical area buffer or structure setback established in this Chapter, the critical area buffer and/or structure setback shall be modified to exclude the footprint of the existing primary structure. Expansion into any existing structure into the critical area buffer or critical area structure setback shall be allowed only pursuant to the provisions of SMC 18.80.080.



18.80.080 Development exceptions.

~~Exceptions to the development restrictions and standards set forth in SMC 18.80.050 and 18.80.070 may be permitted by application to the planning commission pursuant to the provisions of this section.~~

A. **Reasonable Use Exceptions**. Nothing in this chapter is intended to preclude reasonable use of property. An applicant for a city permit to develop or use real property located in a critical area may apply for a reasonable use exception as set forth in SMC 18.72. Applications for modification of critical area development standards shall be processed as Type B permits as set forth in SMC 20.01.

1. An applicant requesting modification shall provide the director with the following information:
    a. Technical studies and other data that describe the possible injurious effects of the proposed development on occupiers of the land, on other properties, on public resources, and on the environment. Possible injurious effects must be described even when the injurious effect will become significant only in combination with similar effects from other developments; and
    b. An explanation with supporting evidence of how and why compliance with the unmodified critical areas development standards would not permit reasonable use of the property.
2. The reasonable use exception shall be approved and critical areas development standard may be modified only when all of the following findings can be made:
    a. The application of this chapter would deny all reasonable use of the property;
    b. No other reasonable use of the property has less impact on the critical area;
    c. The proposed impact to the critical area is the minimum necessary to allow for reasonable use of the property;
    d. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter or its predecessor;
    e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
    f. To the extent feasible while still allowing for reasonable use of the property, the proposal has been mitigated to avoid, reduce, or compensate for loss of critical area functions and values consistent with the best available science; and
    g. The proposal is consistent with other applicable regulations and standards.
3. A critical areas development standard may be reduced, waived or otherwise modified only to the extent necessary to make the standard reasonable in light of all the facts and circumstances of a particular case. In modifying a development standard, the director may impose reasonable conditions that prevent or mitigate the same harm that the modified regulation was intended to prevent or mitigate.
4. A decision to modify a development standard may be appealed pursuant to the provisions of SMC 20.01. The decision as to whether development pursuant to a modified development standard will cause significant injury shall be affirmed unless

found to be clearly erroneous. The decision as to whether strict application of a development standard is reasonable shall be accorded substantial weight, and the burden of proof of justifying the reasonable use exception shall be on the applicant.

~~Reasonable Use Exceptions in Stream Corridors, Ravines, Marine Bluffs, and Beaches and Associated Coastal Drift Process Areas.~~

~~1. Single-Family Dwellings. Development of one single-family dwelling that is not part of a larger development proposal within the buffer of stream corridors, ravines, marine bluffs, and beaches and associated coastal drift process areas on a development site may be approved by the planning commissionif the applicant demonstrates that:~~

~~a. The extent of development within the buffer is limited to that which is necessary to create a disturbed area which is no larger than 5,000 square feet;~~

~~b. There is no other reasonable alternative to developing the buffer;~~

~~c. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least adverse impact on the environmentally sensitive area;~~

~~d. The proposal incorporates the development standards of SMC 18.80.070, and~~

~~e. The proposal is consistent with the purpose and intent of this chapter.~~

~~2. Other Development Proposals. An applicant may propose a reasonable use development exception (other than one single-family dwelling on a development site in accordance with subsection (A)(1) of this section) pursuant to the following decision criteria:~~

~~a. The proposal is limited to the minimum necessary to fulfill reasonable use of the property and there is no other reasonable alternative;~~

~~b. The proposal is compatible in design, scale and use with other development or potential development in the immediate vicinity of the subject property in the same zone classification and with similar site constraints;~~

~~c. The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the environmentally sensitive area or areas;~~

~~d. The proposal incorporates the development standards of SMC 18.80.070; and~~

~~e. The proposal is consistent with the purpose and intent of this chapter.~~

~~3. Limited Waiver of Steep-Slope Disturbance Limitations. Any one or all of the disturbance limitation requirements of SMC 18.80.070 may be waived if the planning commission determines that the application of such requirements is not feasible for developing one single-family dwelling on a development site and the proposal is consistent with the purpose and intent of this chapter.~~

~~4~~B. **Modification of Existing Structures**. Existing structures or improvements that do not meet the requirements of the chapter are considered conforming pursuant to 18.80.075 and may be remodeled, reconstructed or replaced provided that the new construction does not further disturb or encroach upon a~~n environmentally sensitive~~critical area or its buffer.

C~~5~~. **Previously Altered ~~Environmentally Sensitive~~ Critical Areas or Buffers**. If any portion of a~~n environmentally sensitive~~ critical area or its buffer has been altered from its natural state, the applicant may propose to develop within the altered area pursuant to the following decision criteria:

a. The ~~environmentally sensitive~~critical area or buffer was lawfully altered in accordance with the provisions of the city ordinances and any state and federal laws at the time the alteration occurred;

b. The alteration has significantly disrupted the natural functions of the ~~environmentally sensitive~~critical area or its buffer as determined by a qualified professional;

c. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least adverse impact on the ~~environmentally sensitive~~critical area and its buffer as determined by a qualified professional;

d. The proposal incorporates the development standards of SMC 18.80.070~~, and~~;

e. The new development will not further degrade the critical area or its buffer as determined by a qualified professional;

f. The proposal is consistent with the purpose and intent of this chapter; and

g. The applicant shall mitigate and enhance the remaining critical area or buffer. An enhancement plan shall be submitted in accordance with the requirements of SMC 18.80.060.

~~6. Alternatively, if the planning commission determines that application of these standards would deny all reasonable economic use of the property, the city may take the property for public use with just compensation being made.~~

~~B~~D. **Emergencies**. The ~~planning~~ Department of Community Development ~~commission~~ director may approve improvements that are necessary to respond to emergencies that threaten the public health and safety, or public development proposals, when it determines that no reasonable alternative exists and the benefit outweighs the loss.

1. Emergencies shall be verified by a licensed engineer and notice of their existence shall be posted in a paper of general circulation within the city.

2. Within 30 days, the Director shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions shall apply.

3. After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the City in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner.

~~C~~E. **Drainage Facilities**. ~~Significant and important~~ Category III or IV wetlands ~~and streams~~ and their buffers, and stream buffers may be altered for use as a public drainage facility provided that all requirements of the city storm water management plan and all other local, state and federal laws are satisfied, and so long as increased and multiple natural resource functions are achievable and the benefits outweigh any lost resource. The ~~planning~~ Department of Community Development ~~commission~~ director may approve public drainage facilities in a ~~wetland or stream~~ buffer only when it determines that long-term impacts are minimal or when there are no practicable or reasonable alternatives and mitigation is provided. Drainage facilities shall be limited to the outer 25% of a buffer.

~~D~~F. **Trails and Trail-Related Facilities**. Public and private trails and trail-related facilities, such as picnic tables, benches, interpretive centers and signs, and viewing platforms shall be allowed, but use of impervious surface shall be minimized. Trails and trail-related facilities shall be avoided within streams. The ~~planning~~ Department of Community Development ~~commission~~ director may approve such trails and facilities only when he/she determines that there is no practicable or reasonable upland alternative. Trail planning construction and maintenance shall adhere to the following additional criteria:

1. Trails and related facilities shall, to the extent feasible, be placed on existing levies, road grades, utility corridors or any other previously disturbed areas;
2. Trails and related facilities shall be planned, aligned, and constructed to minimize removal of trees, shrubs, snags and important wildlife habitat and disturbance to critical area functions;
3. ~~Trail construction and maintenance shall follow the U.S. Forest Service Trails Management Handbook (FSH 2309.18, June 1987) and Standard Specifications for Construction of Trails (EM-7720-109, June 1984), as may be amended, or trail standards adopted by the city;~~
4. ~~Viewing platforms, interpretive centers, picnic areas, benches and access to them shall be designed and located to minimize disturbance;~~
5. ~~5.~~ Trails and related facilities shall provide water quality protection measures to assure that runoff from them does not directly discharge to wetlands or streams; and
4~~6~~. Private trail widths shall be limited to 5 feet; public trail widths shall be limited to 5 feet or the minimum necessary to achieve American Disabilities Act (ADA) compliance; ~~Within buffers, trails and trail-related facilities shall be aligned and constructed to minimize disturbance to stream functions and values~~
5. Public trails shall be constructed and located in a manner that will achieve ADA compliance.
6. Trails and related facilities shall not exceed five percent (5%) impervious surface based on the total size of the critical area and its buffer.

~~E~~G. **Utilities**. Every attempt shall be made to avoid locating new utilities within streams and stream buffers. The ~~planning~~ Department of Community Development ~~commission~~ director may approve new utilities in streams and stream buffers only when it determines that there is no practicable or reasonable upland alternative.

~~F~~H. **Stream Crossings**. Stream crossings, whether for access or utility purposes, shall be avoided to the extent possible; but when necessary due to the lack of feasible alternatives, crossing of streams shall follow all applicable local, state and federal laws and the following criteria:

1. Bridges are required for streams ~~which~~ that support salmonids, unless otherwise allowed by the Washington State Department of Fisheries;
2. All crossings using culverts shall use superspan, ~~or~~ oversize, box, or bottomless culverts;
3. All crossings shall be constructed and installed during summer low flow between June 15th and September 15th;
4. Crossings shall not occur in salmonid spawning areas unless no other feasible crossing site exists;

5. Bridge piers or abutments shall not be placed in either the floodway or between the ordinary high-water marks unless no other feasible alternative placement exists;
6. Crossings shall not diminish flood-carrying capacity;
7. Crossings shall provide for maintenance of culverts, bridges and utilities; and
8. Crossings shall serve multiple properties whenever possible.

~~G~~I. **Time Limitation**. A development exception automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit within one year of the effective date of the development exception, unless either:

1. The applicant has received an extension for the development exception pursuant to subsection (H) of this section;
2. The development exception approval provides for a greater time period.

~~H~~J. **Time Extension**. The ~~planning~~ Department of Community Development ~~commission~~ director may extend the development extension, not to exceed one year, if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception;
2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
3. The extension of the development exception will not cause adverse impacts to ~~environmentally sensitive~~critical areas.

~~I~~K. **Mitigation**. For any allowable development exception provided under this section, the associated adverse impacts must be considered unavoidable but mitigable. The applicant must first demonstrate that they have taken the following mitigation sequencing actions:

- Avoiding the impact altogether by not taking a certain action or parts of an action;
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- Monitoring the impact and taking appropriate corrective measures.

Mitigation shall not be implemented until after City approval of the critical area report and mitigation plan prepared in accordance with subsection 4 below. ~~The following restoration and compensation mitigation measures to minimize and reduce impacts shall be required and completed and must be approved by the planning commission prior to development approval:~~

1. General requirements. The applicant shall develop a mitigation plan that provides for construction, maintenance, monitoring and contingencies of the critical areas compensatory mitigation as required by conditions of approval and consistent with the requirements of this Chapter. The mitigation plan must be consistent with subsection 3 of this section. All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. Where feasible, mitigation projects shall be completed prior to activities that will disturb critical areas. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to

existing wildlife and vegetation. For mitigation projects that involve creating new wetlands or relocating streams, the Director of Community Development shall have the authority to modify the buffer requirements on a case-by-case basis to avoid unduly encumbering neighboring properties.~~Restoration. Restoration is required when the functions and values of environmentally sensitive areas have been degraded from alteration prior to development approval. Any restoration shall follow an approved mitigation plan pursuant to subsection (I)(3) of this section.~~

2. On properties where mitigation is required, prior to issuance of any construction, grading, or building permits, or preliminary approval of a Major Plat, Short Plat, or Binding Site Plan, a "Critical Areas Performance Bond" or other suitable financial guarantee as approved by the City Attorney shall be submitted to the Department of Community Development. The amount of the bond or other financial guarantee shall be equal one hundred fifty percent (150%) of the estimated cost of the mitigation. Such bond shall or other suitable financial guarantee shall not be released until all required mitigation is installed.

~~2~~3. Monitoring. All mitigation projects shall be monitored for a period five years. Monitoring reports shall be submitted annually for the first three years following construction and at least upon the completion of the fifth year to document milestones, successes, problems, and contingency actions of the mitigation. The applicant shall deposit an amount equal to 125% of the full cost of monitoring with the City before monitoring begins. The City shall use such funds to pay for monitoring costs associated with the mitigation project. Once the monitoring has been completed, the City shall refund any remaining funds to the applicant within 60 days of receiving the final monitoring report. The director shall have the authority to extend the monitoring period and require additional monitoring reports beyond the initial five-year monitoring period for any project that does not meet the performance standards identified in the mitigation plan, does not provide adequate replacement for the functions and values of the impacted critical area, or otherwise warrants additional monitoring (such as when forested wetlands are restored or created). ~~Compensation. Compensation is required from developers for all approved alterations to streams. Compensation for approved alterations shall follow an approved mitigation plan pursuant to subsection (I)(3) of this section.~~

~~a. The applicant shall maintain or improve stream channel dimensions, including depth, length and gradient; restore or improve native vegetation and fish and wildlife habitat; and create an equivalent or improved channel bed, biofiltration and meandering.~~

~~b. In the case of the exceptions of subsection (A)(3) of this section, the following conditions shall precede any stream alteration approved pursuant to this section:~~

~~i. A mitigation plan for the compensation project shall be submitted by the applicant and approved by the planning commission;~~

~~ii. The compensation project shall be fully implemented following the requirements of the approved mitigation plan;~~

~~iii. Compensation shall be established for at least two years; and~~

~~iv. A final report shall be submitted following the minimum two years documenting that all requirements of a mitigation plan have been fully~~

~~achieved. The planning commission may postpone or limit development, require bonds pursuant to SMC 18.80.100, or use other appropriate techniques to ensure the success of the mitigation plan.~~

~~c. Substitute Fees. In cases where the applicant demonstrates to the satisfaction of the planning commission that a suitable compensation site does not exist, the planning commission may allow the applicant to make a financial contribution to an established water quality project or program. The project or program shall be one which has been approved by city council, subsequent to a public hearing. The project or program must improve environmental quality within the same watershed as the altered stream. The amount of the fee shall be equal to the cost of mitigating the impact of stream alteration and shall be approved by the planning commission and the city council.~~

4~~3~~. Mitigation Plans. All restoration and compensation projects shall follow a mitigation plan prepared by qualified ~~scientists~~ professionals containing, at a minimum, the following components:

a. Baseline Information. Quantitative data shall be collected and synthesized for both the impacted ~~environmentally sensitive~~critical area and the proposed mitigation site, if different from the impacted ~~environmentally sensitive~~critical area, following procedures approved by the ~~planning commission~~Department of Community Development;

b. Environmental Goals and objectives. Goals and objectives describing the purposes of the mitigation measures shall be provided, including a description of site selection criteria, identification of target evaluation species and resource functions;

c. Performance standards. Specific criteria for fulfilling environmental goals and objectives and for beginning remedial action or contingency measures shall be provided, including water quality standards, species richness and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

d. Detailed Construction Plan. Written specifications and descriptions of mitigation techniques shall be provided, including the proposed construction sequence, accompanied by detailed site diagrams and blueprints that are an integral requirement of any development proposal.

e. Monitoring Program. A program outlining the approach for assessing a completed project shall be provided including descriptions or proposed experimental and control site survey or sampling techniques. A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the mitigation project. A report shall be submitted at least twice yearly documenting milestones, successes, problems and contingency action of the restoration or compensation project. The ~~planning~~ Department of Community Development director shall require that the applicant monitor the ~~compensation or restoration~~ project ~~for a minimum of two years~~consistent with subsection 2 above.

f. Contingency Plan. A plan shall be provided fully identifying potential courses of action and any corrective measures to be taken when monitoring or evaluation indicates project standards are not being met.

g. Performance and Maintenance Securities. Securities ensuring fulfillment of the mitigation project, monitoring program and any contingency measures shall be posted pursuant to SMC 18.80.110~~0~~0.

5~~4~~. Restoring Closed Stream Segments.

a. The City allows the voluntary opening of previously channelized/culverted streams and the rehabilitation and restoration of streams, especially on public property or when a property owner is a proponent in conjunction with new development.

b. When closed stream segments are restored, a protective buffer shall be required of the stream section. The buffer distance shall be 25 feet, regardless of stream classification, to allow for restoration and maintenance. The stream and buffer area shall include habitat improvements and measures to prevent erosion, landslide and water quality impacts.

c. Removal of pipes conveying streams shall only occur when the City determines that the proposal will result in a new improvement of water quality and ecological functions and will not significantly increase the threat of erosion, flooding, slope stability or other hazards.

6~~5~~. Other mitigation alternatives, such as banking, in-lieu fees, off-site mitigation, and/or advance mitigation, may be used if the City has established procedures.

a. In-Lieu Fee. To aid in the implementation of off-site mitigation, the City may develop a program which prioritizes wetland areas for use as mitigation and/or allows payment in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process. The program should address:

i. The identification of sites within the City that are suitable for use as off-site mitigation. Site suitability shall take into account wetland functions, potential for wetland degradation, and potential for urban growth and service expansion, and

ii. The use of fees for mitigation on available sites that have been identified as suitable and prioritized.

b. Wetland Mitigation Banks. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

i. The bank is certified under state rules;

ii. The Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

iii. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

7~~6~~. Final Approval. The ~~planning~~ Department of Community Development ~~commission~~ director shall grant final approval of a completed restoration or compensation project if

the final report of the project mitigation plan satisfactorily documents that the area has achieved all requirements of this section. (Ord. 631 § 1, 1992)

18.80.090 Notice to Title and Protective Tracts ~~and easements~~.

A. To inform subsequent purchasers of real property of the existence of critical areas, when development is permitted in an identified critical area or its associated buffer, a notice to title applicable to the property shall be filed with the Clallam County Auditor. The notice shall state that critical areas or buffers have been identified on the property and that limits on actions in or affecting the critical area or buffer may exist. The notice shall run with the land. This notice shall not be required for development by a public agency or public or private utility when within a recorded easement or right-of-way, or on the site of a permanent public facility. The applicant shall submit proof that the notice has been filed for public record before the city approves any development permit for the property or, in the case of subdivisions, short subdivisions, planned unit developments, and binding site plans, at or before recording.

B. Separate ~~environmentally sensitive~~critical area tracts ~~or easements~~ shall be ~~used~~ required for subdivisions, development agreements, binding site plans, or any other project that requires a site permit, to protect ~~environmentally sensitive~~critical areas that are to remain undisturbed pursuant to this chapter. ~~The terms and conditions of the tracts or easements shall impose upon all owners and occupiers of land subject to the tracts or easements the obligation, enforceable on behalf of the public by the city, to leave the areas of the tracts or easements permanently undisturbed.~~ The ~~planning~~ Department of Community Development director or responsible designee shall require that the owner~~s~~/applicant of parcels with ~~such~~ critical area~~/environmentally sensitive~~ features and delineations ~~as determined by SMC 18.80.040(E)~~ convey this information ~~to~~ on parcel/plat legal documents filed with the city and the county. The plan shall clearly depict the critical areas tract, which must include the critical area and any required buffers. Other lands may be included within the critical areas tract at the developer's discretion. Development restrictions within the tract shall be clearly noted on the site plan. Responsibility for maintaining critical area tracts shall be held by a homeowners association, adjacent lot owners, the permit applicant or designee, or other appropriate entity as approved by the Department of Community Development director or authorized designee shall also be indicated on the plat or plan. ~~In a single family residential zone, any lots containing an environmentally sensitive area easement shall be of a dimension of not less than 5,000 square feet, exclusive of such easement.~~ (Ord. 2002-027 § 4; Ord. 631 § 1, 1992)

18.80.100 Critical aquifer – r~~R~~echarge areas.

A. **Intent**. The intent of this section is to identify, classify and protect vulnerable aquifer-recharge areas within the city~~. It is the intent of this section~~ and to protect vulnerable aquifer-recharge areas from pollution by pre-land use activities.

B. **Applicability**. This section applies to all development proposals within designated areas with a critical recharging effect on aquifers used for potable water.

C. **Permitted Uses**. Development permitted on lands or shorelands designated as having critical recharging effect on aquifers used for potable water shall be the same as those permitted in the underlying zoning classification subject to the restrictions and standards of this chapter.

D. **Classification and Designation.**

1. Classification. All city lands shall be classified as having either a high, moderate or low aquifer-recharge potential. At a minimum, classification shall be based on soil permeability as described within the Soil Survey of Clallam County. Where adequate information is available, aquifer recharge potential shall be further classified based on the recharge potential of surficial geologic materials, depth to groundwater, and topography (i.e., slopes). Lands classified as having a high, moderate or low aquifer-recharge potential shall also be classified as having a high, moderate or low susceptibility to contamination of an underlying aquifer, respectively. Based on these criteria, the potential for recharging aquifers or transmitting contaminants to the underlying aquifer is greatest where the aquifer is close to the ground surface, where ground surface slopes are minimal, and where the recharge potential of the soils and/or surficial geologic material is greatest.

2. Designation. All lands classified as high or moderate aquifer-recharge potential and aquifer susceptibility are ~~hereby~~ designated as areas with a critical recharging effect on aquifers used for potable water. Critical aquifer recharge areas shall be rated as high or moderate susceptibility areas as follows:

a. High susceptibility aquifer recharge areas are all wellhead protection areas within the five-year travel time boundary;

b. moderate susceptibility aquifer recharge areas are all wellhead protection areas within the ten-year travel time boundary; and

c. low susceptibility all areas within the City that do not meet the criteria for a high or moderate susceptibility rating.

These areas shall be ~~delineated~~ identified on maps available at the ~~city planning~~ Ddepartment of Community Development ~~and the Clallam County department of community development~~.

3. Declassification. Applicants may request that the City declassify a specific area included in the map. The application must be supported by a hydrogeologic assessment demonstrating that the designation is not warranted based on the physical character of the aquifer. The application to declassify an area shall be reviewed by the City and a determination made to amend the map as appropriate.

E. **Definitions Referral**. The use of terms within this section shall include those listed below and the definitions used in SMC 18.80.030.

1. “Aquifer” means a saturated geologic formation which will yield a sufficient quantity and quality of water to serve a private or public system or well. “Sufficient” means a possible minimum draw of three gallons per minute.

2. “Aquifer recharge” or “aquifer recharge area” means the process by which water is added to an aquifer. It may occur naturally by the percolation (infiltration) of surface water, precipitation or snowmelt from the ground surface to a depth where the earth materials are saturated with water. Aquifer recharge can be augmented by “artificial” means through the addition of surface water (e.g., land application of wastewater or storm water) or by the injection of water into the underground environment (e.g., drainfields and drywells). Aquifer-recharge areas are those areas overlying the aquifer(s) where natural or artificial sources of water can move downward to an aquifer(s). Most areas are aquifer recharge areas.

3. “Aquifer susceptibility” means the ability of the natural system to transmit contaminants to and through the ground water system.

4. “Critical aquifer recharge areas” means those land areas which contain hydrogeologic conditions which facilitate aquifer recharge and/or transmitting contaminants to an underlying aquifer.

5. “Ground water” means all water found beneath the ground surface, including a saturated body of rock, sand, gravel or other geologic material.

F. **Performance Standards** ~~for Regulated Uses~~. The following protection standards shall apply to the regulated uses outlined below and in areas designated as high or moderate susceptibility. The City shall impose development conditions when necessary to prevent degradation of groundwater. Conditions shall be based on known, available, and reasonable methods of prevention, control, and treatment.

1. Activities that will not degrade ground water quality and adversely affect aquifer the recharging may be permitted in a critical aquifer recharge area if they comply with the city storm water management regulations and other applicable local, state and federal regulations. These activities typically include commercial and industrial development that does not include storage, processing, or handling of any hazardous substance, or other development that does not substantially divert, alter, or reduce the flow of surface or ground waters.

2. ~~1.~~ Aboveground Storage Tanks or Vaults. Above ground storage tanks or vaults for the storage of hazardous substances or dangerous wastes as defined in Chapter 173-303 WAC, or any other substances, solids or liquids in quantities identified by the Clallam County environmental health division, consistent with Chapter 173-303 WAC, as a risk to ground water quality, shall be designed and constructed so as to:

a. Prevent the release of a hazardous substance to the ground, ground waters or surface waters; and

b. Have constructed around and under it an impervious containment area enclosing or underlying the tank or part thereof. Impervious containment shall be greater than the volume of the tank to avoid an overflow of the containment area;

c. Provide for release detection;

d. Provide written spill response and spill notification procedures to the local fire district.

~~2~~3. Agricultural Activities. Agricultural activities, including commercial and hobby farms, are encouraged to incorporate best management practices concerning animal keeping, animal waste disposal, fertilizer use, pesticide use and stream corridor management, and seek the technical assistance of the Clallam County Conservation District and cooperative extension agent.

~~3~~4. Land Divisions. Subdivisions, short subdivisions and other divisions of land relying on on-site septic systems because City sewer services are not available shall be evaluated for their impact on ground water quality. The following measures may be required as determined by the Clallam County environmental health division:

a. An analysis of the potential nitrate loading to the ground water may be required to assess the impact on ground water quality;

b. Alternative site designs, phased development and/or ground water quality monitoring may be required to reduce contaminant loading where site conditions indicate that the proposed action will measurably degrade ground water quality;

c. Open spaces may be required on development proposals overlying areas highly susceptible for contaminating ground water resources;

d. Community/public water systems and community drainfields are encouraged and may be required where site conditions indicate a high degree of potential contamination to individual wells from on-site or off-site sources;

e. Where wells are required to be abandoned, the applicant shall ensure that they are abandoned according to state guidelines;

f. Remove contaminants from storm water runoff prior to their point of entry into surface or ground water resources using available and reasonable best management practices in conformance with Department of Ecology "Stormwater Management ~~Guidelines~~Manual for the Puget Sound Basin."

~~4. Landfills, Junkyards, etc.~~

~~a. Landfills, junkyards, auto wrecking yards, and other solid waste disposal facilities, other than brush and stumps, sawdust, and inert construction debris, shall demonstrate that such facilities will not significantly impact ground water resources. In order to make such determination, the city engineer shall require the filing of a hydrologic report addressing the following:~~

~~i. Geologic setting and soils information of the site and surrounding area;~~

~~ii. Water quality data, including pH, temperature, conductivity, nitrates, and bacteria;~~

~~iii. Location and depth to perched water tables;~~

~~iv. Recharge potential of facility site (permeability/transmissivity);~~

~~v. Local ground water flow, direction and gradient;~~

~~vi. Location, depth and other water quality data mentioned in subsection (F)(4)(b) on the three shallowest wells or springs located within 1,000 feet of the site;~~

~~vii. Surface water locations within 1,000 feet of the site;~~

~~viii. Discussion of the effects of the proposed project on ground water quality and quantity;~~

~~ix. Recommendations on appropriate mitigations, if any, to assure that there shall be no significant degradation of ground water quality or quantity; and~~

~~x. Provisions for contaminant release detection.~~

~~b. Development on all lands on which the report indicates the proposed development could negatively impact the quality of the aquifer shall be prohibited unless the report can demonstrate conclusively that these negative impacts would be overcome in such a manner as to prevent adverse impacts on the ground water.~~

~~c. The report shall be prepared by a person or persons with experience in hydrogeologic assessment who shall derive his/her livelihood from employment in hydrogeology or a related field. The person shall also be knowledgeable in the effect of the proposed development on water quality.~~

5. Parks, Schools and Recreation Facilities. Fertilizer, herbicide and pesticide management practices of schools, parks, golf courses and other nonresidential facilities that maintain large landscaped areas shall be evaluated in relation to best management practices as recommended by the cooperative extensions service.

6. Storm Water Standards for Commercial and Industrial Uses. All new commercial and industrial land uses ~~which either:~~ that ~~(a)~~ have greater than 5,000 square feet of impervious area~~;~~ or ~~(b)~~ handle, store, dispose, transport or generate hazardous substances/wastes defined as dangerous or extremely dangerous wastes under Chapter 173-303 WAC (regardless of quantity) ~~which~~ that may come in contact with storm water runoff including, but not limited to, gas stations and distributors, carwashes, trucking companies, and paint shops,~~;~~ shall remove contaminants prior to their point of entry into surface or ground water resources using available and reasonable best management

practices in conformance with the current version of the Department of Ecology Stormwater Management Guidelines as adopted by the City. Maintenance of storm water facilities must be assured as a permit condition ~~of the city engineer~~.

7. Underground Storage Tanks and Vaults. Underground storage tanks and vaults used for the storage of hazardous substances, solids or liquids in quantities identified by the Clallam County ~~e~~Environmental ~~H~~health ~~D~~division, consistent with Chapter 173-303 WAC, as a risk to ground water quality, shall be designed and constructed so as to:

a. Prevent releases due to corrosion or structural failure for the operational life of the tank or vault;

b. Be cathodically protected against corrosion, constructed of noncorrosive material, steel-clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance;

c. Use material in the construction or lining of the tank which is compatible with the substance to be stored;

d. Provide for release detection method(s); and

e. Provide written spill response and spill notification procedures to the local fire district.

8. ~~Utility Transmission Facilities. Utility facilities which carry oil, gas or any other hazardous substance shall provide hydrologic information as required in subsection (F)(4) of this section in addition to spill prevention measures and an emergency spill management plan.~~ Spreading or Injection of Reclaimed Water or Biosolids. Water reuse or biosolid projects must be in accordance with the City's Comprehensive Plans and approved by the Departments of Ecology and Health.

9. ~~Sewage Effluent and Sludge Disposal. Sewage and sludge disposal shall be prohibited on lands having a high aquifer recharge potential and aquifer susceptibility, unless it can be demonstrated by a licensed engineer that treated sludge applied to the land will not pose a contamination danger to the aquifer. Sewage and sludge disposal on lands having a moderate aquifer recharge potential and aquifer susceptibility shall provide hydrologic information as required in subsection (F)(4) of this section.~~ Vehicle Repair and Servicing. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

G. **Prohibited Uses**. The following activities and uses are prohibited in high and moderate critical aquifer recharge areas:

1. Dry wells on sites used for vehicle repair and servicing shall not be allowed, and any existing dry wells on the site must be abandoned using techniques approved by the Department of Ecology prior to commencement of the any new vehicle repair and servicing facility;

2. Landfills including hazardous or dangerous waste, municipal solid waste, special waste, and inert and demolition waste landfills;

3. All classes of underground injection wells, unless approved by State or local authorities as part of an approved remediation action; and

4. Facilities that store, process, or dispose of radioactive substances. (Ord. 631 § 1, 1992)

18.80.110 Securities and enforcement.

A. **Performance Securities**. The ~~planning commission~~Department of Community Development director may require the applicant of a development proposal to post a cash performance bond or other acceptable security to guarantee ~~that the applicant will properly construct all structures and improvements required by this chapter~~ full performance of all mitigation required under this Chapter. ~~The security shall guarantee that the work and materials used in construction are free from defects.~~ All securities shall be on a form approved by the ~~planning commission~~City Attorney. Until written release of the security, the security may not be terminated or canceled. The ~~planning commission~~Department of Community Development director shall release the security upon determining that all ~~structures and improvements have been satisfactorily constructed and~~ mitigation requirements have been fully performed and upon the applicant ~~posting by the applicant of a maintenance security if one is required~~ depositing the monitoring costs required under SMC 18.80.080(I) with the City.

B. **Monitoring**. ~~Monitoring is required to~~ Costs associated with monitoring under any mitigation plan required under SMC 18.80.080(I) shall be paid in accordance with that section.

~~Maintenance Securities. The planning commission shall require the applicant to post a cash maintenance bond or other acceptable security guaranteeing that structures and improvements required by this chapter satisfactorily perform for a minimum of two years. This requirement shall also apply in the case of required mitigation improvements. All securities shall be on a form approved by the planning commission. Until written release of the security, the principal or surety may not be terminated or canceled. The planning commission shall release the security upon determining that performance standards established for evaluating the effectiveness and success of the structures and improvements have been satisfactorily met. The performance standards shall be approved by the planning commission and contained in the mitigation plan developed and approved during the review process.~~

C. **Renewable Bonds**. Any bonds required by this section may be in the form of one-year bonds to be renewed as appropriate.

D. **Enforcement**. Violations of this chapter shall be subject to the enforcement provisions of this code and shall be punishable as a misdemeanor offense. (Ord. 631 § 1, 1992)